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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-3391

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JEREMY V. COHEN,
Attorney for Petitioner,
1016 Liberty Bank Building,
Buffalo, New York 14202.

FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
Of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-343-8457

INDEX.

	Page
Prayer	1
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	3
Reasons for Granting the Writ	7
Conclusion	13
Appendix A—Opinion and Judgment of the United States Court of Appeals for the Second Circuit	1a
Appendix B—Decision and Order of the United States District Court for the Western District of New York	10a

AUTHORITIES CITED.

Cases.

Amstar Corporation v. Amalgamated Meatcutters & Butcher Workmen, 468 F.2d 1372 (5th Cir. 1972)	4a
Armco Steel Corp. v. UMWA, 505 F.2d 1129 (4th Cir. 1974)	12
Avco Corp. v. Local 787, 459 F.2d 968 (3d Cir. 1972)	7
Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970)	7, 9, 10, 11, 12
Drake Bakeries, Inc. v. Local 50, American Bakery & Confectionary Workers, 370 U.S. 254 (1962)	8
Emery Air Freight Corp. v. Local 295 Teamsters, 449 F.2d 586 (2d Cir. 1971); Cert. denied 405 U.S. 1065	7
Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974)	7, 10

Page

General Cable Corp. v. IBEW, 331 F.Supp.478 (D. Md. 1971) 4a
Hyster Co. v. Independent Towing and Lifting Machine Assn., ... F. 2d .... (7th Cir. 1975); 89 LRRM 2885 12
Inland Steel Co. v. Local 1545 UMWA, 505 F.2d 293 (7th Cir. 1974) 4a
Island Creek Coal Co. v. UMWA, 507 F.2d 650 (3d Cir. 1975) 12
ITT, Inc. v. Communications Workers, 422 F. 2d 77 (2d Cir. 1970) 8
Monongahela Power Co. v. IBEW, 484 F.2d 1209 (4th Cir. 1973) 4a
Monroe Sandler Corp. v. Livingston, 377 F.2d 6 (2d Cir. 1967); Cert. denied 389 U.S. 831 (1967) 8
NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, 502 F.2d 321 (3d Cir. 1974) (*en banc*) Cert. denied 95 S. Ct. 625 (1974) 4a
NLRB v. Rockaway News Supply Co., 345 U.S. 71 (1953) 10
Pilot Freight Carriers, Inc. v. Local 391 Teamsters, 497 F.2d 311 (4th Cir. 1974); Cert. denied 419 U.S. 869 (1974) 12
Plain Dealer Publishing Co. v. Typographical Union No. 53 *et al.*, ... F.2d .... (7th Cir. 8/15/1975) No. 75-1219 12
H. K. Porter Co., Inc. v. Local 37, United Steelworkers of America, 400 F.2d 691 (4th Cir. 1968) 8
Simplex Wire & Cable Co. v. Local 2208 IBEW, 314 F. Supp. 885 (D. NH 1970) 4a
Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95 (1962) 8
Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957) 8
United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960) 7, 8, 9

Page

Valmac Industries, Inc. v. Food Handlers Local 425, ... F.2d .... (8th Cir. 1975); 89 LRRM 3073 ...10, 12
Wilmington Shipping Co. v. International Longshoremen's Association, ... F.2d .... (4th Cir. 1974); 86 LRRM 2846; Cert. denied 95 S.Ct. 498 (1974) 12

STATUTES.

Labor Management Relations Act
29 USC 173 (d) 7
29 USC 185 (a) 8
Norris-LaGuardia Act
29 USC § 104 2
29 USC § § 107-112 7

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No. .....

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UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals For the Second Circuit

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on May 1, 1974.

Opinions Below

The opinion of the United States Court of Appeals for the Second Circuit, not yet officially reported, appears unofficially at 89 LRRM 2303. It is appended at App.A, pp. 1a-9a, *infra.* The opinion of the United States District Court

for the Western District of New York appears at 386 F.Supp. 405. It is appended at App.B, pp. 10a-19a, *infra.*

Jurisdiction

This Court has jurisdiction under 28 USC § 1254(1). The judgment of the United States Court of Appeals for the Second Circuit was entered on May 1, 1975. On July 23, 1975, Thurgood Marshall, an Association Justice of this Court, granted Petitioner's application and extended the time for filing this petition to and including September 2, 1975 (Order A-73).

Question Presented

If a union which represents one employee bargaining unit, and the employer, enter into a binding collective bargaining agreement that contains both a mandatory arbitration procedure to resolve disputes between the employer and the union arising out of the agreement, and an unequivocal "no strike" pledge, but the union orders employees in this bargaining unit to stop work and to honor a strike and picketing established by the same union, on behalf of another bargaining unit of employees employed by the same employer at the same facility, does a federal district court have the authority under § 301 of the Labor Management Relations Act to enjoin the union's sympathy strike conduct and to compel arbitration of the dispute as to whether the union's conduct violates the collective bargaining agreement?

Statutes Involved

This case involved § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, as well as § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a). These provisions are set forth at App.A, pp. 2a, 3a, footnotes 1 and 2, *infra.*

Statement of the Case

Federal Jurisdiction

The Buffalo Forge Company, petitioner, pursuant to § 301 of the Labor Management Relations Act (29 U.S.C. § 185), brought this action against the United Steelworkers of America ("International Union"), two affiliated local unions and various officers and agents of those labor organizations, for compensatory damages and other relief, including injunctive relief and an order directing arbitration, as a result of the unions' alleged breach of no strike clauses contained in an effective collective bargaining agreement to which all parties to this action are currently bound.

Statement of Facts

The Company is engaged in the manufacture and sale of pumps and air handling equipment at three separate plants and office facilities in the Buffalo, New York area. For many years, the International Union and its affiliated locals 1874 and 3732 have represented the Company's production and maintenance employees under successive collective bargaining contracts. The current contract, by its terms, remains in full force and effect until September 28, 1975.

The International Union and two other affiliated local unions (not parties to this action) represent the Company's office clerical and technical employees who are employed at the Company's three Buffalo area facilities. On November 16, 1974, in negotiating their first agreement with the Company, the International Union and the office-technical local unions struck the Company and established picket lines at all three of the Company's Buffalo area facilities. That strike and picketing by the International Union and the office-technical locals are bona fide, primary and legal, and is continuing.

On November 18, 1974, the production and maintenance employees at one of the plants refused for the day to cross the picket lines there. On November 20, 1974, the Company learned that a production and maintenance employee work stoppage at all three plants was scheduled by the respondent unions for the following morning. The Company sent telegrams to officers of the unions, which set forth the Company's position that a work stoppage would be in violation of the collective bargaining agreement, and offered to arbitrate any dispute involved.

From November 21 through December 15, 1974, at the admitted direction and instruction of the International Union, the local unions and the production and maintenance employees honored the picket lines and engaged in a work stoppage at all three of the Company's plant facilities. Manufacturing operations at the Company's three plants were completely halted. The production and maintenance employees returned to their jobs on Monday, December 16th; the next regular work day after the district court issued its Decision and Order denying the Company's request for a preliminary injunction.

There are currently, and at all times material herein, labor agreements covering the production and maintenance employee bargaining units. The agreements are between the Company and United Steelworkers of America, AFL-CIO, on behalf of itself and members of the local unions. The collective bargaining agreements are valid and apply to the dispute herein. These agreements are signed by representatives of both the International and local unions, as well as the Company.

The agreements provide a mandatory six-step dispute settlement procedure ending in binding arbitration.[1] The "no strike" clause is incorporated in a section entitled "Responsibilities of the Parties".[2] The agreements also contain a

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[1] In part, the grievance-arbitration clause reads:

> 26. Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately in the following manner:
>
> • • •
>
> 32. Sixth. In the event the grievance involves a question as to the meaning and application of the provisions of this Agreement, and has not been previously satisfactorily adjusted, it may be submitted to arbitration upon written notice of the Union or the Company. Such notice shall be served upon the other party within five (5) working days after receipt of the answer in the Fifth (5th) Step. The party requesting arbitration shall apply to the Federal Mediation and Conciliation Service for an arbitrator, who shall be jointly selected by the parties. The arbitrator shall not have the power to add to, to disregard or modify any of the terms and conditions of this Agreement. The decision of the arbitrator shall be binding upon the parties. The expenses of arbitration and the compensation for services rendered by the arbitrator shall be shared equally by the parties.

[2] Section III
Responsibilities of the Parties

> 11. Each of the parties hereto acknowledges the rights and responsibilities of the other party and agrees to discharge its responsibilities under this Agreement.
>
> 12. The Union (its Officers and representatives at all levels) and all employees are bound to observe the provisions of this Agreement.
>
> 13. The Company (and its Officers and representatives at all levels) is bound to observe the provisions of this Agreement.
>
> 14. In addition to the responsibilities that may be provided elsewhere in this Agreement, the following shall be observed:
>
> a. The Union and its members will not solicit membership on Company time.

(Footnote continued on following page.)

"management clause"[3], and the following clause pertaining to instructions to report for work:

> 22. (a) Any employee who works on a regular work day at his regular work is deemed to be instructed to report for work on the next succeeding scheduled work day *unless the Company* notifies the employee not to report for work, with notice also to the Union. [Emphasis added]

The Proceedings Below

The Company appealed the district court's denial of injunctive relief. On May 1, 1975, the United States Court of Appeals for the Second Circuit affirmed the order of the district court. The Appeals Court decision is appended at App. A, *infra*.

(Footnote continued from preceding page.)

b. There shall be no strikes, work stoppages, or interruption or impeding of work. *No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity.* The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union Officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such conduct and shall not result in any disciplinary actions against the Officers, committeemen or stewards involved. [Emphasis added].

c. There shall be no discrimination, restraint or coercion against any employee based on consideration of race, creed, color, sex, age, national origin or membership in the Union.

d. There shall be no lockout.

[3] 43. Subject to the provisions of this Agreement, the management of the plant and the direction of working forces including the right to hire, suspend or discharge for proper cause, transfer and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company.

REASONS FOR GRANTING THE WRIT.

I. The decision below incorrectly construed and applied federal labor policy in conflict with this Court's holdings in *United Steelworkers v. Warrior & Gulf Nav. Co.; Boys Markets v. Clerks Union; and Gateway Coal Co. v. Mine Workers.*

Congress passed the *Norris-LaGuardia Act* in 1932, as a reaction to the wide-spread misuse by federal courts of injunctions in certain labor-management controversies. The Act prohibited federal courts from issuing injunctions in "labor disputes" and provided strict procedural safeguards in those cases wherein injunctions were appropriate.[4] The wording of the Act itself reveals that the core purpose of the Statute was to eliminate jurisdiction of the federal courts over *lawful* strikes in labor disputes. Injunctions are still appropriate when "unlawful acts have been threatened . . . or have been committed . . ."[5]

As evidenced by the passage of the *Labor Management Relations Act*, in 1947, a federal policy had emerged "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements" *Avco Corp. v. Local 787*, 459 F. 2d 968, 970 (3d Cir. 1972).

Section 203(d) of that Act provided that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement".[6]

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[4] 29 U.S.C. §§ 107-112. *Emery Air Freight Corp. v. Local 295 Teamsters*, 449 F.2d 586 (2d Cir. 1971); Cert. denied 405 U.S. 1006.

[5] 29 U.S.C. § 107(a).

[6] 29 U.S.C. § 173(d).

Section 301(a) of that Act granted federal courts jurisdiction over "suits for violation of contracts between an employer and a labor organization".[7] Section 301 has been interpreted as a grant of jurisdiction to federal courts to order specific performance to enforce arbitration provisions in labor agreements. *Textile Workers v. Lincoln Mills*, 353 U.S. 448 (1957); *ITT, Inc. v. Communications Workers*, 422 F. 2d 77 (2d Cir. 1970).

In the twenty-seven years since these statutes were enacted, this Court has formulated an expansive body of federal labor relations law, grounded upon the basic statutory premise that industrial stability is best fostered by the substitution of arbitration for strikes. The Court has acknowledged that:

> Complete effectuation of the federal policy is achieved when the agreement contains both an arbitration provision for all unresolved grievances and an absolute prohibition of strikes, the arbitration agreement being the "quid pro quo" for the agreement not to strike.[8]

If a labor agreement contains a broad no-strike clause, a claimed breach and the scope of the prohibition are proper subjects for arbitration.[9]

> "The rule is that unless the parties expressly exclude a matter, the Court will conclude that they intended to submit it to arbitration."[10]

[7] 29 U.S.C. § 185(a).

[8] *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 578, Fn. 4 (1960).

[9] *Drake Bakeries, Inc. v. Local 50, American Bakery and Confectionary Workers*, 370 U.S. 254 (1962); *H. K. Porter Co., Inc. v. Local 37, United Steelworkers of America*, 400 F.2d 691 (4th Cir. 1968); *Teamsters Local 174 v. Lucas Flour Co.*, 396 U.S. 95 (1962).

[10] *Monroe Sandler Corp. v. Livingston*, 377 F.2d 6, 9-10 (2d Cir. 1967); Cert. denied 389 U.S. 831 (1967).

Under *Steelworkers v. Warrior & Gulf, supra:*

> ". . . an order to arbitrate the particular grievance should not be denied unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."[11]

The applicable labor agreements in this case clearly spell out a broad, unequivocal prohibition which the unions violated. Section 26 contains an explicit prohibition of work stoppages concerning contractual grievances. Section 14 b., a section containing no explicit references to any other term of the agreement, prohibits all strikes, work stoppages, interruptions and impeding of work during the term of the agreement; and prohibits authorization, instigation, aid or condonation of "any such activities" by officers or representatives of the International and local unions. The *only* express contractual exception to these prohibitions are "unsuccessful efforts" by union agents to prevent and terminate wildcat strikes.

These agreements also provide for final and binding arbitration of disputes (whether raised by the Company, the Unions or employees) "as to the meaning and application of the provisions of this agreement" as well as disputes which arise out of "trouble of any kind . . . in the plant". These provisions are certainly broad enough to cover the underlying controversy herein.

In *Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970), this Court recognized that a pro-arbitration policy would be frustrated unless the federal courts possessed the power to compel arbitration if the agreement to arbitrate the dispute could be established and if an injunction would have been proper but for *Norris-LaGuardia*. The holding was made in a factual context in which the union had engaged in a

[11] 363 U.S. 574, 582-583.

strike in furtherance of a grievance initiated by the union over the interpretation and application of certain contract provisions.

More recently, this Court expanded the *Boys Markets* holding in *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974). There, the Court applied the presumption of arbitrability to "safety disputes" even though such disputes were not specifically referred to in the grievance and arbitration provision of the agreement; and it enjoined the work stoppage even though Section 502 of the ***Labor Management Relations Act*** was asserted to be a statutory grant of a right to engage in a work stoppage.[12]

The Second Circuit has adopted a narrow reading of the *Boys Markets* holding. Its Opinion is replete with indications that union-induced work stoppages are enjoinable only when the stoppage is *over* a contractual grievance initiated by the Union or employees. Thus, it has adopted a "double standard" of arbitrability, which presumes union or employee initiated grievances *are* arbitrable but employer initiated grievances over disputed contract provisions *are not.*

The Second Circuit's holding that the grievance must be the underlying cause of the stoppage construed *Boys Markets* too literally. First, it fails to consider the factual context in which this Court's decision was rendered. Second, "it makes little sense to argue that because the work stoppage precipitated the dispute, it was not a work stoppage 'over' a grievance which the parties were contractually bound to arbitrate".[13] Finally, since binding and enforceable bargaining agreements serve the interests of both labor and management in day to day in-

[12] Similarly, and in view of the agreement provisions herein, the respondents' reliance on Section 7 of the *National Labor Relations Act* is misplaced. *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71, 80 (1953).

[13] *Valmac Industries, Inc., supra*, at 89 LRRM p. 3076. This is especially true where, as here, the company offered to arbitrate the union sympathy strike plan before the stoppage occurred.

dustrial relations, the legislative purposes of Section 301 are impaired, and strong incentives against participating in meaningful bargaining are encouraged by the decision below. The institution of collective bargaining, so critical to the core purposes of national labor policy, as well as the cause of industrial peace, are disserved by breach of contract strikes. Refusing to *enforce* the bargaining agreement was *not* one of the purposes of *Norris-LaGuardia.*

Requiring the parties to submit the merits of the claimed breach of contract to their own dispute resolving procedures encourages utilization of those procedures. A narrow inquiry into whether a strike in breach of contract *was caused* by an arbitrable matter, based on an assumption that only an order requiring arbitration of the precipitating cause of the strike can encourage arbitration, misses the point. What can be more fundamental to a collective bargaining relationship than the scope of a no-strike obligation? Should not the parties be required to resort to the settlement procedures of their relationship to determine the scope of their bargain? In fact, if encouraging and promoting labor arbitration is one of the goals of Section 301, its utilization is fully encouraged when ordered in those cases where the arbitrable dispute may not be the precipitating cause of the work stoppage; but, rather, the work stoppage itself is of questionable validity under the bargaining agreement. A dispute of that nature goes to the very heart of the collective bargaining relationship and labor arbitration would seem particularly well suited to resolve the difficulty.

Because the *Boys Markets* remedy is so deeply anchored as an aid to arbitral jurisdiction, judicial relief in the nature of specific performance of no-strike obligations without referring the merits of the dispute to arbitration is not warranted. In this context, therefore, *Norris-LaGuardia* retains its vitality; depriving courts of authority to specifically enforce no-strike obligations, where the risk of judicial in-

tervention into the merits of the labor dispute in injunction proceedings is great because the parties have deprived arbitration of jurisdiction to resolve the merits of that dispute.

II. The decision below presents an important federal question on which the Courts of Appeals are in direct conflict.

The issues presented here have caused division among the circuit Courts of Appeals. Under similar factual circumstances, some jurisdictions have concluded that the work stoppage ("sympathy strike") must be *over* a grievance which both parties are contractually bound to arbitrate before the precepts of this court's decision in *Boys Markets* can attach.[14] If this were not so, it is contended, every work stoppage would be enjoinable when the collective bargaining agreement contains a no-strike provision and, thus, the policy of *Norris-LaGuardia* will be virtually obliterated.

On the other hand, other jurisdictions have not construed the *Boys Markets* refinement of federal labor policy so narrowly.[15] These courts enjoined the sympathy strike where the contractual legality of the work stoppage itself is the underlying arbitrable question. The dominant federal labor policy favoring the peaceful settlement of such labor con-

[14] See cases cited in footnote 3 of the Second Circuit's opinion, App. A, *infra*. See also: ***Hyster Co. v. Independent Towing and Lifting Machine Assn.***, ...F.2d.... (6th Cir. July 7, 1975); and ***Plain Dealer Publishing Co. v. Typographical Union No. 53, et al.***, ...F.2d.... (7th Cir. 1975).

[15] See cases cited in footnote 3 of the Second Circuit's opinion, App. A, *infra*. See also: ***Valmac Industries, Inc. v. Food Handlers Local 425***, ...F.2d.... (8th Cir. July 29, 1975); 89 LRRM 3073; ***Armco Steel Corp. v. UMWA***, 505 F.2d 1129 (4th Cir. 1974); ***Island Creek Coal Co. v. UMWA***, 507 F.2d 650 (3d Cir. 1975); ***Pilot Freight Carriers Inc. v. Local 391 Teamsters***, 497 F.2d 311 (4th Cir. 1974); Cert. denied 419 U.S. 869 (1974); ***Wilmington Shipping Co. v. International Longshoremen's Association***, ...F.2d...., (4th Cir. 1974); 86 LRRM 2846; Cert. denied 95 S.Ct. 498 (1974).

troversies by binding arbitration, it is contended, does not sacrifice the core purpose of *Norris-LaGuardia* and could otherwise leave the employer virtually helpless to compel the union to honor its agreement to arbitrate rather than strike.

The Second Circuit opinion explicitly recognizes the significance of the issues here: "This appeal raises a narrow but significant question of labor law of first impression in this court . . .". The conflict in the circuits seriously offends the requirement for uniform interpretation of the federal pro-arbitration policy. Clearly, the issue is a recurrent one affecting millions of workers and employers in every circuit in the nation. The extent of the disagreement among the circuits can be resolved only by this Court.

Conclusion.

For the reasons stated above, this petition for certiorari should be granted.

Respectfully submitted,

JEREMY V. COHEN,
Flaherty, Cohen, Grande & Randazzo, P.C.,
1016 Liberty Bank Building,
Buffalo, New York, 14202,
Attorney for Petitioner.

APPENDIX A.

Opinion and Judgment of the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS
For the Second Circuit

No. 829—September Term, 1974.
(Argued April 15, 1975 Decided May 1, 1975.)
Docket No. 74-2698

BUFFALO FORGE COMPANY,
Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I.W. ABEL, as International President, MITCHELL F. MAZUCA, Individually and as District Director, and JOHN GRUKA, Individually and as International Representative of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Individually and as President, and VALENTINE OLEJNICZAK, Individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Individually and as President, and ALFRED LIGAMARRI, Individually and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO,
Defendants-Appellees.

Before:
Kaufman, *Chief Judge,*
Smith and Timbers, *Circuit Judges.*

Appendix A.

Appeal from the order of the United States District Court for the Western District of New York, John T. Curtin, *Chief Judge*, denying preliminary injunction against strike called by unions party to collective bargaining agreements with no-strike and mandatory arbitration provisions. 29 U.S.C. §§ 104, 185(a). 386 F. Supp. 405 (1974).

Affirmed.

Jeremy V. Cohen, Buffalo, N.Y. (Flaherty, Cohen, Grande & Randazzo, P.C., Buffalo, N.Y.), *for Appellant.*

Rudolph L. Milasich, Jr., Pittsburgh, Pa. (Carl B. Frankel, Pittsburgh, Pa., of counsel); Bernard Kleiman (Kleiman, Cornfield & Feldman, Chicago, Ill.); Thomas P. McMahon (McMahon & Crotty, Buffalo, N.Y.); George H. Cohen (Bredhoff, Cushman, Gottesman & Cohen, Washington, D.C.) of counsel, *for Appellees.*

Smith, *Circuit Judge:*

This appeal raises a narrow but significant question of labor law of first impression in this court: If a union enters into a collective bargaining agreement establishing a mandatory arbitration procedure and including a no-strike clause and then later strikes *solely* out of deference to another union's lawful picket line at a place of employment common to the two unions, does a federal district court have authority under § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a),[1] to enjoin the strike or is it precluded from granting injunctive relief by § 4 of the Norris-La Guardia Act of 1932, 29 U.S.C. § 104?[2] Resolution of this issue requires interpretation of *Boys Market, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), where the Supreme Court set forth a general standard for reconciling the competing demands of the two statutory provisions in the context of a strike over a grievance which the parties are bound by agreement to submit to arbitration. In the case

[1] § 185. Suits by and against labor organizations—Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Appendix A.

[2] § 104. Enumeration of specific acts not subject to restraining orders or injunctions

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following act:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

before us, the United States District Court for the Western District of New York, John T. Curtin, *Chief Judge,* determined that under *Boys Market* it was deprived of jurisdiction by § 4 of the Norris-La Guardia Act to issue a preliminary injunction sought by Buffalo Forge Company against the work stoppage generated by the defendant unions' order to its members to observe other employees' lawful picket line; the unions' obligations under the preexisting collective bargaining agreements to resolve disputes with management through a mandatory six-step settlement procedure culminating in arbitration and to refrain from authorizing strikes were deemed not controlling in light of Congress' stated antipathy to injunctions in § 4. 386 F. Supp. 405 (1974). After reviewing the divergent authority on the issue presented by this case,[3] we are convinced that Chief Judge Curtin has correctly construed the import of *Boys Market* and therefore affirm the order below.[4]

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[3] Cases supporting the district court's holding in this case include *Amstar Corp. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,* 468 F.2d 1372 (5th Cir. 1972); *General Cable Corp. v. The International Brotherhood of Electrical Workers, Local Union 1644, AFL-CIO,* 331 F. Supp. 478 (D. Md. 1971); *Simplex Wire and Cable Co. v. Local 2208 of the International Brotherhood of Electrical Workers, AFL-CIO,* 314 F. Supp. 885 (D. N.H. 1970). Contrary authority are *Napa Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926,* 502 F.2d 321 (3d Cir. 1974) (*en banc*), *cert. denied,* 43 U.S.L.W. 3328 (Dec. 9, 1974); *Monongahela Power Co. v. Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC,* 484 F.2d 1209 (4th Cir. 1973); *Inland Steel Co. v. Local Union No. 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir. 1974); *Barnard College in the City of New York v. Transport Workers Union of America, AFL-CIO,* 372 F. Supp. 211 (S.D.N.Y. 1974).

[4] The appellees also urge an alternative ground for affirmance: that the appellant is not entitled to injunctive relief because it has not made "every reasonable effort" to settle the dispute by negotiation, as required by 29 U.S.C. § 108. Since we concur in the district court's basis for denying the preliminary injunction, we need not reach the merits of this contention.

The United Steelworkers of America and two of its locals represent the production and maintenance employees of Buffalo Forge Company, a manufacturing and sales concern with three plants and offices in or nearby Buffalo, N.Y. The same international union and two other locals represent the company's office clerical and technical employees. On November 16, 1974, in negotiating their first collective bargaining agreement with Buffalo Forge, the unions representing the office clerical and technical employees went out on strike and began picketing all three of the company's Buffalo area sites. On November 18, the production and maintenance employees at one of the plants refused for the day to cross the picket lines. Three days later, the unions representing the production and maintenance employees at the three plants called a work stoppage at all the plants, which gave rise to this suit for damages and injunctive relief by Buffalo Forge against these unions and various named officers and agents of the unions. On December 13, the district court denied the company's request for a preliminary injunction and the instant appeal followed, 28 U.S.C. § 1292(a)(1).[5] The work stoppage then terminated on the next regular work day after the district court's order. The controversy remains a live one, however, for the office clerical and technical employees are still on strike and so long as their picketing continues, the work stoppage under review

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[5] § 1292. Interlocutory decisions

(a) The courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

• • •

may, as stipulated by the parties, "be resumed at any time in the near future."[6]

In *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962), the Supreme Court found that § 301(a) of the Labor Management Relations Act, which vests jurisdiction in federal district courts over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry representing commerce," in no way further qualifies the preexisting nonabsolute bar established by § 4 of the Norris-La Guardia Act to federal court injunctions "in any case involving or growing out of any labor dispute." The dissenting justices contended that the majority's decision was inconsistent with the strong congressional policy favoring settlement of labor-management differences by arbitration and with *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), and other recent Supreme Court cases attempting to give full play to that policy. Writing for the *Sinclair Refining* dissenters, Mr. Justice Brennan suggested an accommodation between the two statutory provisions:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-La Guardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an

[6] Joint Appendix at 2a.

> injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.

Sinclair Refining, supra, 370 U.S. 195 at 228 (emphasis in original). Eight years later in *Boys Market*, Mr. Justice Brennan made the above suggestion the core of his majority opinion overruling *Sinclair Refining*. *Boys Market, supra*, 398 U.S. 235 at 254.

In assessing the extent to which § 301(a) modified the anti-injunction policy of Norris-La Guardia, we base the tenor of our inquiry on the Court's emphasis in *Boys Market* on the narrowness of its holding in favor of injunctive relief. *Id.* at 253. *Compare Emery Air Freight Corp. v. Local Union 295*, 449 F.2d 586, 588 (2d Cir. 1971). In narrowly construing the exception to § 4 of the Norris-La Guardia Act carved out by § 301(a) in the view of the *Boys Market* Court, then, we take particular note of the various indications in *Boys Market* and in the *Sinclair Refining* dissent upon which the latter drew that only strikes *over a grievance* which the union has agreed to arbitrate are within the scope of the exception. *See, e.g., Boys Market, supra*, 398 U.S. at 248, 254; *Sinclair Refining, supra*, 370 U.S. 195 at 217-18, 224-25, 228. The strike at issue in the instant case is not over a grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

This distinction is crucial in light of the need, recognized in *Boys Market* and the *Sinclair Refining* dissent, to reconcile the anti-injunction policy of Norris-La Guardia with the pro-arbitration policy of the later act. If a strike not seeking

redress of any grievance is enjoinable, then the policy of Norris-La Guardia is virtually obliterated. For since a no-strike provision, if not in fact present in the employment contract, will be implied where the agreement sets up mandatory arbitration machinery, *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95, 104-06 (1962), it is, as the Fifth Circuit has concluded, "difficult to conceive of any strike which could not be so enjoined." *Amstar Corp. v. Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO*, 468 F.2d 1372, 1373 (5th Cir. 1972). Undue expansion of the "narrow" holding in *Boys Market* may be avoided, on the other hand, by proper attention to the actual threat posed by strikes not over grievances with the employer to the policies promoted by § 301(a). A strike not seeking to pressure the employer to yield on a disputed issue is not an attempt to circumvent arbitration machinery established by the collective bargaining agreement. Accordingly, it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining such strikes. *See Napa Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926*, 502 F.2d 321, 330-31 (3d Cir. 1974) *(en banc)* (Hunter, *J.* & Seitz, *C.J.*, dissenting), *cert. denied*, 43 U.S.L.W. 3328 (Dec. 9, 1974); *Inland Steel Co. v. Local Union No. 1545, United Mine Workers of America*, 505 F.2d 293, 300-01 (8th Cir. 1974) (Fairchild, *J.*, dissenting).

Since the work stoppage under review is motivated solely by respect for other employees' picket lines[7] and plainly is not

[7] In the district court, Buffalo Forge claimed that the work stoppage was at least in part a protest against truck driving assignments to the production and maintenance employees. The district court determined that this claim was unsupported by the evidence before it, and the appellant expressly disclaims seeking to disturb the district court's finding on this appeal. Brief for Appellant at 10.

aimed at resolving an existing dispute by extra-arbitral means, the district court's order denying a preliminary injunction gave effect to § 4 of the Norris-La Guardia Act without disservice to the policies informing § 301(a) of the Labor Management Relations Act. Chief Judge Curtin's application of the two provisions to the context before him comported with the Supreme Court's direction to district courts in its *Boys Market* opinion to reconcile the two provisions rather than simplistically read a repeal of § 4 into the later enactment.

The order of the district court denying a preliminary injunction is therefore affirmed.

Affirmed.

APPENDIX B

Decision and Order of the United States District Court for the Western District of New York

UNITED STATES DISTRICT COURT
Western District of New York

BUFFALO FORGE COMPANY,

Plaintiff,

vs.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHELL F. MAZUCA, individually and as District Director, and JOHN GRUKA, individually and as International Representative of the UNITED STEELWORKERS OF AMERICA, AFL-CIO,

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, individually and as President; and VALENTINE OLEJNICZAK, individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, individually and as President; and ALFRED LIGAMMARI, individually and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO,

Defendants.

Civil 74-546

Appearances:

Flaherty, Cohen, Grande & Randazzo, P. C. (Jeremy V. Cohen, Esq., of Counsel) Buffalo, New York, for Plaintiff.

McMahon & Crotty (Thomas P. McMahon, Esq., of Counsel), Buffalo, New York, for Defendants.

Appendix B.

This is an action brought by the Buffalo Forge Company under Section 301 of the Labor-Management Relations Act (29 U.S.C. § 185), for a temporary restraining order and a preliminary and permanent injunction against the defendants, the United Steelworkers of America, AFL-CIO [International Union], Local Union No. 1874 and Local Union No. 3732, who are engaged in a work stoppage against the plaintiff. The summons and complaint in this action were filed and served on November 26, 1974. On the same day, pursuant to prior arrangement, counsel for plaintiff and defendants conferred with the court concerning plaintiff's application for a temporary restraining order. Because the papers were incomplete, counsel returned again on November 27. On that day the court directed plaintiff's counsel to submit further supporting affidavits, with copies to defendants' counsel, on Friday, November 29, and adjourned argument on plaintiff's request for a temporary retraining order until December 2, 1974 at 2:00 p.m. Counsel appeared as directed on December 2, 1974 and, after hearing argument, the court denied plaintiff's application for a temporary restraining order and directed counsel to appear for a hearing, with witnesses, on December 3, 1974 at 2:00 p.m. concerning plaintiff's application for a preliminary injunction. From this hearing and from the affidavits submitted by the parties, the court makes the following findings of fact.

Plaintiff is a corporation engaged in the manufacture and sale of pumps and air handling equipment at three separate plants and office facilities in the Buffalo, New York area: 490 Broadway, Buffalo, New York, Duke Road, Cheektowaga, New York, and Oliver Street, North Tonawanda, New York. Defendants' counsel has conceded that the court has jurisdiction of this matter pursuant to Section 301 of the Labor-Management Relations Act.

Appendix B.

For many years defendant International Union and defendant Locals 1874 and 3732 have represented plaintiff's production and maintenance employees under successive collective bargaining contracts. The current contract, by its terms, remains in full force and effect until September 28, 1975. There are actually two production and maintenance bargaining units, one represented by defendant International Union and Local 1874, covering approximately 930 employees at the Broadway and Duke Road plants, and the other represented by defendant International Union and Local 3732, covering approximately 83 employees at the Oliver Street plant.

Defendant International Union and two other affiliated Local Unions represent plaintiff's office, clerical and technical employees who are employed at the Broadway, Duke Road and Oliver Street facilities. Plaintiff and defendant International Union and these sister Locals (Locals No. 8267 and No. 8269) [sometimes hereinafter referred to as the Office Technical Unions] have been negotiating for several months on the first collective bargaining agreement covering plaintiff's office, clerical and technical employees. On Saturday, November 16, 1974, defendant International Union and the Office Technical Locals struck plaintiff and established picket lines at all of the plaintiff's Buffalo area facilities. This strike and picketing are continuing to date.

On Monday, November 18, 1974, Local 3732 engaged in a one-day work stoppage at the Oliver Street plant and refused to cross the Office and Technical Local's picket lines there. The next day Local 3732 returned to work and worked as scheduled until midmorning on Thursday, November 21. On that morning, at the direction and instruction of defendant International Union, Local 1874 and its members commenced a work stoppage at the Broadway and Duke Road plants,

Appendix B.

which has continued to date. Later the same morning, Local 3732 and its members walked off their jobs at the Oliver Street plant in North Tonawanda and, since that time, have refused to cross the picket lines established by the Office Technical Locals. Manufacturing operations at plaintiff's three plants have been completely halted.

The collective bargaining agreements in force between the plaintiff and defendants contain a no-strike clause and a mandatory procedure for the adjustment of grievances. The no-strike clause, Section 14b, provides in part:

> There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity.

The adjustment of grievances, Section 26, provides in part:

> Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this Agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences, . . .

Plaintiff contends that the no-strike clause prohibits the defendant Unions from refusing to cross the Office Technical Unions' picket lines because the differences between plaintiff and defendants must be submitted to the mandatory grievance and arbitration procedures set forth in the agreement. In the alternative, plaintiff argues that the work stoppage is the result of an incident which occurred on November 18, 1974 when one of plaintiff's supervisors ordered a plant truck driver, who is a member of one of the defendant Locals, to drive a non-Company owned tractor-trailer through the Of-

fice Technical Unions' picket lines. Both parties agree that if this work assignment resulted in a dispute between the parties and caused the walkout of defendant Locals, this dispute would be subject to the mandatory grievance procedures spelled out in the agreement, and that plaintiff would be entitled to the requested injunctive relief. For this reason, the court will first decide whether this incident was the cause of the work stoppage.

Plaintiff's position regarding this incident is principally set out in the affidavit and testimony of Robert E. Pfeil, Assistant Personnel Manager at Buffalo Forge. He related that on Monday, November 18, 1974, Valentine Zizzi and Valentine Olejniczak, President and Vice President, respectively, of Local 1874, complained to him about the order of the Company directing members of their Local to drive other companies' trucks through the picket lines. Mr. Pfeil said he was not acquainted with this problem and would look into it. According to Mr. Pfeil, they met again on November 19, 1974. (The parties agree that the next meeting occurred on November 20 and not on the 19th.) His testimony at the hearing was similar to the information set forth in his affidavit, which was as follows:

> Mr. Olejniczak said they did not object to our drivers positioning the vans or trailers for loading or unloading once the van was on company premises. I told Mr. Olejniczak and Mr. Zizzi that to the extent the company had assigned its truck drivers in the past to do what they were now complaining about, that the company would continue to make those assignments. I also said that our truck drivers would not drive another company tractor trailer into or out of the company's yard, but that we would probably continue to have our drivers hook up to another company's trailer with a Buffalo Forge Company

> tractor and drive the trailer into or out of the company premises. Neither Mr. Zizzi or Mr. Olejniczak seemed particularly pleased with my answer to their complaint but they left my office. I have had no conversation with them or they with me on this subject since.

Mr. Zizzi and Mr. Olejniczak agreed in substance with the recollection of Mr. Pfeil about the meetings, but state that when they left Mr. Pfeil's office, the problem was resolved to their satisfaction.

In support of the argument that the work stoppage was due to the order given to the truck drivers, the plaintiff called Anthony F. Kubacki, Lawrence Small and Elvin B. Morton, supervisory personnel. These men were present at the entrance to the plaintiff's Broadway plant on the morning of November 21, 1974, which was the first day of the work stoppage. Mr. Kubacki recalls that while in the presence of Mr. Small and Mr. Morton, he met with Mr. Olejniczak, who said that the reason why the Union would not come to work was because of the truck driver problem. Mr. Olejniczak denies making this statement to Mr. Kubacki. Mr. Small and Mr. Morton do not support the testimony of Mr. Kubacki about this conversation. Mr. Small recalls that he heard "someone" say "something" about a truck driver problem, and Mr. Morton recalls only that he heard Mr. Olejniczak say "truck driver" and "problem" but heard nothing else. Mr. Kubacki and Mr. Morton made written reports of this meeting, which were not produced at the hearing.

Mr. Small testified that on November 27, 1974 Stanley Grey, a member of the grievance committee, told him that the problem was over the truck drivers' dispute. At the hearing Mr. Grey denied making this statement. There is no other evidence to support Mr. Small's recollection of this event.

The contention of defendants that the work stoppage was not precipitated by the truck driver incident is confirmed by an event which occurred late on November 20. On that afternoon Darrell Stewart, Vice President of Buffalo Forge, learned that a work stoppage was planned for the following morning. He sent telegrams to officers of the Local Unions and the International Union setting forth the plaintiff's position that a work stoppage would be in violation of the agreement. In addition, he called into his office Mr. Marvin Pawlowski, an officer of the Local, and read the telegram to him. Mr. Pawlowski told Mr. Stewart that he had heard nothing of any planned walkout and that it was a complete surprise to him. If the cause of the work stoppage was the dispute about the truck drivers, it appears to the court that Mr. Pawlowski would have been aware of it and aware of the planned work stoppage. The plaintiff has not produced evidence sufficient to support its argument that the ordered movement of tractor-trailers through the picket line was the cause of the dispute.

The evidence supports defendants' position that the work stoppage came about because of the direction of the International Union to members of the defendant Locals to respect the picket lines of the Office Technical Union. This direction from the International Union was made at a meeting held with officers of the Local Unions on Wednesday, November 20, 1974 at about 11:30 a.m. It should be noted that the members of the defendant Unions have not engaged in the picketing which is being carried on by the members of the Office Technical Locals. Certain members of the defendant Locals have crossed the picket lines and gone to work.

The more essential questions in this case are whether the work stoppage by Locals 1874 and 3732 is a violation of the no-strike clause contained in the collective bargaining agreement, and whether the defendants are subject to the mandatory adjustment and grievance procedures of the agreement. In a suit brought pursuant to Section 301, before a federal court can enjoin a strike or walkout, the court must find (1) that the strike is in breach of a no-strike obligation under an effective agreement; (2) that the strike is over an arbitrable grievance, and (3) that both parties are contractually bound to arbitrate the underlying grievance which caused the strike. *Boys Markets v. Retail Clerks Union,* 398 U.S. 235 (1969); *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195, 228 (1961) (dissenting opinion), and *Amstar Corp. v. Amalgamated Meat Cutters & Butcher Workmen of North America,* 468 F.2d 1372 (5th Cir. 1972). In *Boys Markets* the Supreme Court adopted the principles set forth in the dissenting opinion in *Sinclair* to determine when an injunction could issue:

> A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which the injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance. 370 U.S., at 228. (Emphasis in original.)

The *Boys Markets* standards do not apply to this case because there is no arbitrable grievance between the parties. The dispute here is between the plaintiff and the striking members of the Office Technical Workers Local. That strike preceded and precipitated the work stoppage of the defendant Locals. This court agrees with the reasoning of the Court of Appeals for the Fifth Circuit in *Amstar, supra,* which said:

> . . . The strike by the Chalmette employees was not "over a grievance" which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute—the validity under the Union's no-strike obligation of the member-employees honoring the ILA picket lines. Were we to hold that the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrate underlying dispute for a *Boys Markets* injunction to issue, it is difficult to conceive of any strike which could not be so enjoined. The *Boys Markets* holding was a "narrow one," not intended to undermine the vitality of the anti-injunction provision of the Norris-LaGuardia Act. Indeed, the Supreme Court specifically stated that its decision did not mean "that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance."
>
> 468 F.2d at 1373.

The court has carefully considered the cases cited by plaintiff but, in almost every instance, these cases are distinguishable from the one before the court. In *Inland Steel Co. v. Local Union 1545, United Mine Workers,* 43 U.S.L.W. 2205 (7th Cir. October 22, 1974), in addition to the no-strike clause and mandatory grievance procedure, the contract provided that "matters not specifically mentioned" in the agreement were covered by the grievance procedure. The cases of *NAPA Pittsburgh, Inc. v. Automobile Local No. 926,*

502 F.2d 321 (3d Cir. 1974), and *Wilmington Shipping Co. v. Longshoremen,* Civ. No. 73-2354 (4th Cir. June 19, 1974), *cert. denied,* November 18, 1974, also involved agreements with additional provisions. *NAPA* dealt with a clause in the collective bargaining agreement between the parties that covered the union's honoring a primary strike against the employer, and *Wilmington* dealt with a clause providing for the union's honoring a "bona fide" picket line. In the instant case, no such additional language appears. Although the cases of *Monongahela Power Co. v. Local No. 2332 IBEW,* 484 F.2d 1209 (4th Cir. 1973), and *Barnard College v. Transport Workers,* 372 F.Supp. 211 (S.D.N.Y. 1974), dealt with agreements which contained no additional language and appear to support plaintiff's position, nevertheless, the court finds that the cases cited by the defendents are controlling. *Amstar, supra; Simplex Wire and Cable Co. v. Local 2208 of the International Brotherhood of Electrical Workers,* 314 F.Supp. 885 (D.C.N.H. 1970); *General Cable Corp. v. International Brotherhood of Electrical Workers,* 331 F.Supp. 478 (D.C. Md. 1971). As in the instant case, in all of these cases there was no contractual provision found restricting the union's right to honor picket lines of other labor organizations. Therefore, from the foregoing findings of fact and conclusions of law, plaintiff's application for a preliminary injunction is hereby denied.

So ordered.

JOHN T. CURTIN,
United States District Judge.

Dated: December 13, 1974.

Supreme Court, U. S.
FILED
NOV 28 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL AS INTERNATIONAL PRESIDENT; MITCHEL F. MAZUCA, IND. AND AS DISTRICT DIRECTOR; JOHN GRUKA, IND. AND AS INTERNATIONAL REPRESENTATIVE OF UNITED STEELWORKERS OF AMERICA, AFL-CIO;

LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; VALENTINE F. ZIZZI, IND. AND AS PRESIDENT; VALENTINE OLEJNICZAK, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; KERMIT HASELEY, IND. AND AS PRESIDENT; AND ALFRED LIGAMMARI, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 2, 1975
CERTIORARI GRANTED OCTOBER 20, 1975

INDEX TO APPENDIX*.

	Page
Docket Entries in Proceedings Below	1
Complaint for Injunctive Relief—Specific Performance and for Damages	2
Portions of Collective Bargaining Agreement	13
Telegraphic Notice of Dispute	22
Stipulation	24

* The Opinion and Judgment of the United States Court of Appeals for the Second Circuit is reprinted beginning at page 1a of the Petition for Writ of Certiorari. The Decision and Order of the United States District Court for the Western District of New York is reprinted beginning at page 10a of the Petition for Writ of Certiorari.

Docket Entries in Proceedings Below.

Nov. 26, 1974, Filed Complaint and original Summons (No. 74-546).

Nov. 27, 1974, Application for TRO and preliminary Injunction.

Nov. 29, 1974, Plaintiff's affidavits filed, per order of District Court, in support of application for TRO.

Dec. 2, 1974, Defendants' affidavits filed, per order of District Court.

Dec. 3, 1974, Hearing on Plaintiff's application for preliminary injunction. Decision Reserved.

Dec. 13, 1974, Filed decision and order denying Plaintiff's application for a preliminary injunction.

Dec. 18, 1974, Filed Plaintiff's Notice of Appeal dated December 16, 1974 (No. 74-2698).

Jan. 7, 1975, Stipulation of counsel re Record on Appeal.

Apr. 15, 1975, Argument on Appeal before United States Court of Appeals for the Second Circuit.

May 1, 1975, Judgment of United States Court of Appeals for the Second Circuit.

Sept. 2, 1975, Petition for Writ of Certiorari docketed. (No. 75-339).

Oct. 20, 1975, Writ of Certiorari granted.

Complaint for Injunctive Relief—Specific Performance and for Damages.

UNITED STATES DISTRICT COURT

Western District of New York

BUFFALO FORGE COMPANY,

Plaintiff.

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I.W.ABEL as International President; MITCHELL F. MAZUCA, individually and as District Director, and JOHN GRUKA, individually and as International Representative, of the UNITED STEELWORKERS OF AMERICA, AFL-CIO,

LOCAL UNION NO. 1874 of the United Steelworkers of America AFL-CIO; VALENTINE F. ZIZZI, individually and as President; and VALENTINE OLEJNICZAK, individually and as Vice President, of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO,

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, individually and as President; and ALFRED LIGAMMARI, individually and as Vice President, of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO,

Defendants.

Civil Action
No. 74-546

COMES NOW THE PLAINTIFF, Buffalo Forge Company, and alleges as follows:

Complaint for Injunctive Relief—Specific Performance and for Damages.

1. The jurisdiction of this Court arises under Section 301 of the Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, Title III, Section 301; 61 Stats. 156, 29 U.S.C. 685, as amended)

2. Plaintiff is a corporation duly organized under and by virtue of the laws of the State of New York, and is licensed to do business and is doing business in the State of New York. At all times material herein, Plaintiff has maintained its principal office and place of business at 490 Broadway, Buffalo, New York, and has been engaged in the business of manufacturing and distributing pumps and air handling equipment at plants and office facilities located at 490 Broadway, Buffalo, New York; Duke Road, Cheektowaga, New York; and Oliver Street, North Tonawanda, New York; where it employs approximately 1750 employees. Plaintiff is in an industry affecting commerce as defined in the Labor Management Relations Act 1947 (Act of June 23, 1947), C.120; 61 Stats. 136; 29 U.S.C. Section 141.197, as amended, hereinafter referred to as the "Act".

3. Defendant, United Steelworkers of America, AFL-CIO, hereinafter called "International Union", is an unincorporated association, commonly known as a "labor union", and by and through its officers, agents and employees, is and at all times material herein has been the collective bargaining representative for production and maintenance employees employed by Plaintiff at its Buffalo, Cheektowaga and North Tonawanda, New York, plants. Said employees are in an industry affecting commerce within the meaning of Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. Section 185.

4. Defendant, Local Union No. 1874 of the United Steelworkers of America, AFL-CIO, hereinafter called "Local 1874", is an unincorporated association, commonly known and referred to as a "labor union", chartered by, a part of and an affiliate of the Defendant, International Union, and has at all times material herein maintained an office at 490 Broadway, Buffalo, New York, and is engaged, through its officers and agents, in representing production and maintenance employees employed by Plaintiff at its Buffalo and Cheektowaga, New York plants. Said employees are in an industry affecting commerce within the meaning of Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. Section 185.

5. Defendant, Local Union No. 3732 of the United Steelworkers of America, AFL-CIO, hereinafter called "Local 3732", is an unincorporated association, commonly known and referred to as a "labor Union", chartered by, a part of and an affiliate of the Defendant, International Union, and has at all times material herein maintained an office at 874 Oliver Street, North Tonawanda, New York, and is engaged, through its officers and agents, in representing production and maintenance employees employed by Plaintiff at its North Tonawanda, New York plant. Said employees are in an industry affecting commerce within the meaning of Section 301 of the Labor Management Relations Act, as amended, 29 U.S.C. Section 185.

6. Defendant, I.W.Abel, is the International President for the International Union; Defendant, Mitchell F. Mazuca, is the District Director for the International Union; and Defendant, John Gruka, is an International Representative for the International Union. The other individual defendants are

officers of Local Union No. 1874 and/or Local Union No. 3732, and also employees of the Plaintiff and are named as representatives of a class, namely the employees of Plaintiff.

7. Plaintiff has been party to collective bargaining agreements with Defendant International Union, Local 1874 and Local 3732 for more than twenty years, the most recent of which is effective, by its terms from October 1, 1972, to September 28, 1975, and covering approximately 930 employees in Local 1874 bargaining unit, and approximately 83 employees in Local 3732 bargaining unit. Copies of said agreements are marked Exhibit "A" and "B" respectively, and made a part hereof.

8. Defendant unions, acting by and through their officers and/or agents are the sole and exclusive bargaining agent for the production and maintenance employees in the bargaining units described in paragraphs 4 and 5 above. Said officers and/or agents have held themselves out as possessing and they do possess the requisite legal authority to have the unions become and remain party to a binding contract with Plaintiff for and on behalf of said employees who are employed by Plaintiff and covered by the Agreements referred to in paragraph 7 above.

9. International Union and its affiliated Local Unions Nos. 8267 and 8269 are the exclusive bargaining agent for office clerical and technical employees of Plaintiff employed at the same plants and office facilities referred to in paragraphs 2, 3, 4 and 5. Plaintiff and International Union and the aforenamed Local Unions have been engaged, for several months, in negotiation of the first collective bargaining agreement covering said office clerical and technical employees.

10. In the absence of a collective bargaining agreement covering office clerical and technical employees, commencing on or about November 16, 1974, International Union, Local Union Nos. 8267 and 8269, and some but not all office clerical and technical employees engaged in a strike, picketing and refusal to perform their work. Said strike, picketing and work stoppage is continuing.

11. On November 18, 1974, Defendant Local Union 3732 and its members, employed by Plaintiff, engaged in a one-day strike and work stoppage and refusal to cross picket lines established by International Union and Local No. 8267 at Plaintiff's plant and office facility at Oliver Street, North Tonawanda, New York.

12. Commencing on or about November 21, 1974, and continuing to date, agents and representatives of Defendant International Union, including Defendant John Gruka and the named defendant officers and agents of Local 1874 and Local 3732 instigated, directed, condoned, participated in, aided and authorized the production and maintenance employees of Plaintiff, members of the aforesaid labor unions, to engage in a strike and work stoppage and collective refusal to cross the picket lines established by International Union and Local Unions 8267 and 8269, at Plaintiff's aforementioned Buffalo, Cheektowaga, and North Tonawanda, New York, facilities, notwithstanding and in derogation of terms of the current collective bargaining agreements binding on International Union, Local 1874 and Local 3732, and their members employed by Plaintiff.

13. On or about November 18, 1974, Defendant labor unions, through their officers and agents, verbally notified Plaintiff of their objection to Plaintiff's instruction and direc-

tion to its truck drivers who are members of Local 1874 and Local 3732, to perform certain duties which required driving vehicles across the picket lines established at the Plaintiff's plants by International Union and Local 8267 and Local 8269.

14. On information and belief, the strike, work stoppage and refusal to cross picket lines described above in paragraph 12 was directed and instituted by the Defendant labor unions and is continuing over the complaint or grievance described above in paragraph 13.

15. The collective bargaining agreements between Plaintiff and Defendant International Union, Local 1874 and Local 3732 contain a mandatory grievance and arbitration procedure, which is set forth in Section V, and at page 12, provides for final and binding arbitration of any dispute or grievance that may arise.

16. The dispute described above in paragraph 13 is subject to the grievance and arbitration procedure referred to and set forth above.

17. The collective bargaining agreements between Plaintiff and Defendants International Union, Local 1874 and Local 3732 (Exhibits "A" and "B") at page 6, (paragraph 14 (b)) specifically prohibits both the Defendant unions and employees from authorizing or engaging in any strikes or work stoppages during the term of the agreements, as follows:

> b. There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and

will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union Officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such conduct and shall not result in any disciplinary actions against the Officers, committeemen or stewards involved.

18. The above-mentioned strike and work stoppage, which began November 21, 1974 and continues to date, has seriously disrupted and interfered with the manufacturing operations of Plaintiff at its Buffalo, Cheektowaga, and North Tonawanda plants. Said work stoppage is over a grievance which both parties are contractually bound to arbitrate under the terms of the collective bargaining agreement and is in violation of the no-strike provisions of said agreements.

19. Plaintiff has, in good faith, performed all requirements and conditions of said collective bargaining agreement and in particular has been and is ready and willing to expeditiously process any grievance or proceed to arbitration concerning the grievance or dispute.

20. Plaintiff has requested, in writing, that the Defendant unions and the members who are Plaintiff's employees, cease and desist from said strike and unlawful work stoppage and that said unions order their members to work. (Exhibits "C" and "D").

21. As a direct result of the foregoing illegal acts and conduct of Defendants in violation of the terms of the collective bargaining agreements, Plaintiff has suffered and will continue to suffer permanent and irreparable damage and injury in meeting its overhead expenses, in loss of revenues and loss

of profits, by the loss of customers and good will, in meeting deliveries and in the potential permanent loss of customers to competitors.

22. The business of Plaintiff is competitive with that of companies producing similar products. Valuable good will and customer relationships have been developed by Plaintiff over a period of years as a result of its prompt, efficient and satisfactory service to its customers.

23. Plaintiff has no adequate remedy in a civil action at law since the delays incident to obtaining relief by way of a civil action at law for damages would result in serious and irreparable damage to Plaintiff's business before such legal relief could be obtained, and to endeavor to sue Defendants in a civil action or actions at law would not prevent a continuance of the illegal acts and conduct nor could all of the injury suffered by Plaintiff be recovered in the form of money damages.

24. If said illegal acts and conduct of Defendants are permitted to continue, Plaintiff will, as a result thereof, suffer more from the denial of an injunction than the Defendants will from its issuance, and as to each item of relief prayed for, greater injury will be inflicted upon Plaintiff by denial of relief than will be inflicted on Defendants by the granting of relief.

25. Plaintiff will suffer further irreparable injury and damage in meeting its overhead expenses, in loss of revenues, and the loss of profits, by the loss of customers and good will, in meeting deliveries and in the potential permanent loss of customers to competitors as a result of the illegal acts and conduct of the Defendants unless a temporary restraining or-

der is issued by this Court restraining and enjoining Defendants from continuing said illegal acts and conduct pending a hearing on Plaintiff's application for a preliminary injunction.

26. On November 26, 1974, Plaintiff notified Defendants' counsel that a complaint would be filed in this Court seeking a temporary restraining order.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendants, and each of them, jointly and severally, as follows:

(a) That temporarily and until the final termination of this suit, the Defendants, their officers, agents, servants, representatives, members and employees, and all those in active concert or participation with them who receive actual notice of the order and each of them, be enjoined and restrained from in any manner authorizing, instigating, encouraging, causing, assisting or participating in any strike, work stoppage or other interference or interruption with Plaintiff's operations at its Buffalo, Cheektowaga and North Tonawanda plants in order to force, induce, solicit, encourage or require Plaintiff to resolve a dispute which is covered by the grievance and arbitration provisions of the collective bargaining agreements.

(b) That the Plaintiff and the Defendants submit, as soon as practicable, to the grievance procedure and arbitration in accordance with the applicable provisions of the collective bargaining agreements between them the dispute between them relating to work performance of truck drivers or any other underlying dispute.

(c) That it be further ordered that the Defendants, their officers, agents and representatives, immediately direct all

employees represented by the Defendant unions and employed by Plaintiff to return to work.

(d) That upon the hearing of this action, Plaintiff's application prayed for above be made permanent.

(e) That Plaintiff be allowed compensatory damages as against all of the aforenamed Defendants.

(f) That Plaintiff be allowed attorney fees and the costs of suit.

(g) That Plaintiff be granted such other relief as the Court may deem appropriate under the circumstances.

Dated: November 26, 1974

JEREMY V. COHEN,
Jeremy V. Cohen, Esq.,
of counsel,
FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
Attorneys for Plaintiff,
Office and Post Office Address,
1016 Liberty Bank Building,
Buffalo, New York 14202,
(716) 853-7262.

State of New York,
County of Erie. } ss.:

JEREMY V. COHEN, being duly sworn, deposes and says that he is the Attorney for Buffalo Forge Company, plaintiff

in this action; that he prepared the foregoing complaint for injunctive relief on behalf of plaintiff; and that the matters and facts contained in it are true and correct to the best of his information, knowledge and belief.

JEREMY V. COHEN.

Subscribed and sworn to
before me this 26th day
of November, 1974.
MARY JANE MATYJAKOWSKI,
Notary Public, State of New York,
Qualified in Erie County,
My Commission Expires March 30, 1975.

State of New York,
County of Erie. } ss.:

DAVID R. NEWCOMB, being duly sworn, deposes and says that he is the President of BUFFALO FORGE COMPANY, the corporation named in the within entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by Buffalo Forge Company is because Buffalo Forge Company is a corporation and the

grounds of his belief as to all matters in said complaint not stated upon his own knowledge are investigations which deponent has caused to be made concerning the subject matter and information acquired by deponent in the course of his duties as an officer of said corporation and from the books and papers of said corporation.

DAVID R. NEWCOMB.

Subscribed and sworn to
before me this 3d day
of December, 1974.
JEREMY V. COHEN,
Notary Public,
State of New York,
Qualified in Erie County,
My Commission Expires
March 30, 1975.

The Comparable Provisions of the Agreement with Local Union No. 3732 are Omitted Because They are Virtually the Same as Those Below.

Page 1 of Original

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AGREEMENT

Made this 9th day of January, 1973 between BUFFALO FORGE COMPANY, and/or its successors or assigns, BUFFALO, NEW YORK (hereinafter referred to as the "Company") and UNITED STEELWORKERS OF AMERICA, AFL-CIO (hereinafter called the "Union") on behalf of itself

and members of Local Union No. 1874, United Steelworkers of America, Buffalo Forge Company employees.

SECTION I

INTENT OF THE AGREEMENT

1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships betweem the employer and the employee, and to set forth herein the basic agreement covering the rates of pay, hours of work and conditions of employment to be observed between the parties hereto consistent with the principle of a fair day's work for a fair day's pay. The Union re-emphasizes its agreement with the objective of achieving the highest level of employee performance and efficiency consistent with safety, good health and sustained effort.

2. The company and the Union encourage the highest possible degree of friendly, cooperative relationships between their respective representatives at all levels and with and between all employees. The officers of the Company and the Union realize that this goal depends primarily on more than words in a Labor Agreement, that it depends primarily on attitudes between people in their respective organizations and at all levels of responsibility. They believe that proper attitudes must be based on full understanding of and regard for the respective rights and responsibilities of both the Company and the Union. They believe also that proper attitudes are of major importance in the local plant where day-to-day operations and administration of the labor Agreement

demand fairness and understanding. They believe that these attitudes can be encouraged best when it is made clear that

Company and Union officials, whose duties involve negotiations of this Labor Agreement are not anti-Union or anit-Company but are sincerely concerned with the best interests and well being of the business and all employees.

3. It is understood and agreed that this Agreement pertains to all production, maintenance employees and truck drivers of the 490 Broadway and 360 Sycamore Street, Buffalo, New York, and 505 Duke Road, Cheektowaga, New York plants of Buffalo Forge Company except office, clerical, supervisory employees who ring the office clocks, stockchasers who ring the office clocks, timekeepers, guards, plant clerks, outside service employees and all other salaried employees; and to said plants upon their relocation within the City of Buffalo or the adjacent towns.

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SECTION III

RESPONSIBILITIES OF THE PARTIES

11. Each of the parties hereto acknowledges the rights and responsibilities of the other party and agrees to discharge its responsibilities under this Agreement.

12. The Union (its Officers and representatives at all levels) and all employees are bound to observe the provisions of this Agreement.

13. The Company (and its Officers and representatives at all levels) is bound to observe the provisions of this Agreement.

14. In addition to the responsibilities that may be provided elsewhere in this Agreement, the following shall be observed:

a. The Union and its members will not solicit membership on Company time.

b. There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union officers or Union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such conduct and shall not result in any disciplinary actions against the Officers, committeemen or stewards involved.

c. There shall be no discrimination, restraint or coercion against any employee based on consideration of race, creed, color, sex, age, national origin or membership in the Union.

d. There shall be no lockout.

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Page 7 of Original

SECTION IV

HOURS OF WORK

15. Except for powerhouse employees, the regular work week shall be five (5) eight (8) hour days from Monday through Friday inclusive. The regular work week shall com-

mence on Monday and end on Sunday. The normal shifts will be as follows:

1st shift .....8:00 a.m. to 4:30 p.m.
2nd shift .....4:30 p.m. to 1:00 a.m.

Changes in the above stated normal shift hours may be made only by mutual written agreement of the Company and the Union.

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Page 9 of Original

22. (a) Any employee who works on a regular work day at his regular work is deemed to be instructed to report for work on the next succeeding scheduled work day unless the Company notifies the employee not to report for work, with notice also to the Union.

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Page 10 of Original

SECTION V

ADJUSTMENT OF GRIEVANCES

26. Should differences arise between the Company and any employee covered by this Agreement as to the meaning and application of the provisions of this Agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made

Page 11 of Original

to settle such differences immediately in the following manner:

27. First. Between the aggrieved employee and the foreman of the department involved; but, the employee's right to Union representation will not be denied. Neither the employee nor the management representative nor the Union representative will make agreements which conflict with the other terms and provisions of this Agreement. The Foreman shall answer the grievance within two (2) working days after presentation, stating the reasons for granting or denying the grievance.

28. Second. In the event the grievance is not satisfactorily adjusted at Step 1, the aggrieved employee may, within two (2) work days after receipt of the foreman's answer refer the grievance to the Superintendent of the department involved. The employee shall be accompanied by his Union representative. The Superintendent shall answer the grievance within three (3) working days after referral to this Step 2, stating the reasons for granting or denying the grievance.

29. Third. In the event the grievance is not satisfactorily adjusted at Step 2, the aggrieved employee, members of the Grievance Committee designated by the Union, within five (5) working days after receipt of the Superintendent's answer, may refer the grievance to the Personnel Manager. Grievances advanced to this Step shall be presented in writing upon forms USA 122, provided by the Union, and approved by the Company. A suitable numbering system for grievances shall be adopted by mutual agreement. Such written grievances shall be accepted and dated by the Personnel Manager at the time of presentation. The grievance will be prepared by the Chairman of the Grievance Committee and signed by him and those involved. The Personnel Manager or his designated representative shall answer the grievance within five (5) working days after termination of discussion at this Step. Grievances involving lost

time or money may be directly presented at the Third Step and reduced to writing immediately. Discussion of the grievance at this step shall be scheduled to be held within five (5) working days after referral to this step.

30. Fourth. In the event the grievance is not satisfactorily adjusted at Step 3, the Grievance Committee or their representative may, within five (5) working days after receipt of the third step answer refer the grievance to the executives of the Comapny or their representatives. When a grievance from a department which has no representative on the Grievance Committee is being considered, the Committee, at its discretion, may call in one of the representatives of such department. The Company shall answer the grievance within five (5) working days after the termination of discussions at this Step. Discussion of the grievance at this Step shall be scheduled to be held within five (5) working days after referral to this Step.

31. Fifth. In the event that the grievance is not satisfactorily adjusted at Step 4, the Grievance Committee, within five (5) working days after receipt of the fourth step answer, may refer the grievance to the Representative of the Company and Representatives of the International Union. The grievance shall be answered in writing within five (5) working days after the termination of discussions at this Step.

32. Sixth. In the event the grievance involves a question as to the meaning and application of the provisions of this Agreement, and has not been previously satisfactorily adjusted, it may be submitted to arbitration upon written notice of the Union or the Company. Such notice shall be served upon the other party within five (5) working days after receipt of

the answer in the Fifth (5th) Step. The party requesting arbitration shall apply to the Federal Mediation and Conciliation Service for an arbitrator, who shall be jointly selected by the parties. The arbitrator shall not have the power to add

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Page 13 of Original

35. All grievances shall be considered carefully and processed promptly in accordance with the applicable procedure of this Agreement. Postponement of grievance schedule to be only by written agreement. "Policy grievances" may be submitted by either the Union or the Company directly at the Fourth Step.

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Page 15 of Original

SECTION VI

MANAGEMENT

43. Subject to the provisions of this Agreement, the management of the plant and the direction of working forces including the right to hire, suspend or discharge for proper cause, transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company.

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Page 50 of Original

SECTION XXIII

REOPENING AND TERMINATION

112. This Agreement shall continue in full force and effect until midnight, September 28, 1975, and from year to year thereafter unless sixty (60) days prior to an expiration date, either party notifies the other in writing by registered mail of its desire to terminate the Agreement in which event the Agreement shall terminate on the expiration date of the year in which the notice is given.

113. Sixty (60) days prior to an expiration date, either party may notify the other, in writing, by registered mail, of its desire to amend or change the Agreement. If the parties are unable to agree upon the proposed amendment or changes on or before the expiration date of the contract, then this Agreement and/or this Agreement as modified, shall remain in full effect until a further written notice is served by either party on the other terminating this Agreement.

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Page 51 of Original

Dated at Buffalo, New York, this 9th day of January, 1973.

BUFFALO FORGE COMPANY
Milton A. Bender

UNITED STEELWORKERS OF AMERICA—AFL-CIO
I. W. Abel
Walter J. Burke
Joseph P. Molony
Mitchel F. Mazuca
Robert A. Klinshaw

Telegraphic Notice of Dispute Attached to Complaint.

COMMITTEE: LOCAL No. 1874
Stanley Grey
Valentine F. Zizzi
Aloysius B. Mazur
Michael J. Donofrio
Leon G. Urbaniak
Val Olejniczak
Robert W. Laskowski
Dominic S. Palmeri
Eugene L. Gawron

* * *

The Other Telegrams to Union Officials (Exhibits C and D attached to the Complaint) are Omitted Because They are Virtually the Same as the One Below.

W U MAILGRAM
Western Union
United States Postal Service
U.S. Mail

MGMBUFC BUF
2-037538E324002 11/20/74
ICS IPMMTZZ CSP
1 7168473503 MGM TDMT BUFFALO NY 11-20 0610P EST
ZIP 14204
(Illegible)

BUFFALO FORGE CO BENDER
490 BROADWAY
BUFFALO NY 14204

THIS MAILGRAM IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

Telegraphic Notice of Dispute Attached to Complaint.

7168473503 NL TDMT BUFFALO NY 101 11-20 0610P EST
PMS MITCHELL MAZUCA, DISTRICT DIRECTOR, DLR
UNITED STEEL WORKERS OF AMERICA 688 MAIN ST
BUFFALO NY 14202

THERE ARE CONFIRMED REPORTS THAT LOCAL NUMBER 1874 THROUGH IT'S STEWARDS AND OTHER REPRESENTATIVES IS PREPARING TO ENGAGE IN A WORK STOPPAGE WHICH WOULD BE IN VIOLATION OF PARAGRAPH 14B OF THE AGREEMENT BETWEEN THE STEEL WORKERS AND THE BUFFALO FORGE COMPANY
PLEASE HAVE THE LOCAL OFFICERS RETRACT THIS PLAN IMMEDIATELY AND ADVISE ALL EMPLOYEES OFTHER OBLIGATIONS UNDER PARAGRAPH 14B THROUGH WRITTEN AND ORAL COMMUNICATIONS
THE COMPANY IS READY WILLING AND ABLE TO PROCEED TO ARBITRATION UNDER THE COLLECTIVE BARGAINING AGREEMENT IN CONNECTION WITH ANY DISPUTE WHICH HAS CAUSED THIS REPORTED ACTION
YOUR COOPERATION IN THIS MATTER WILL BE APPRECIATED
D N STEWART VICE PRESIDENTS MANUFACTURING
BUFFALO FORGE CO

1812 EST

MGMBUFC BUF

Stipulation

UNITED STATES COURT OF APPEALS

Second Circuit

BUFFALO FORGE COMPANY,

Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al.*,

Defendants-Appellees.

Docket No. 74,2698.

IT IS HEREBY STIPULATED by and between counsel for the respective parties in the above-entitled action that the transcript taken in this matter need not be ordered or included in the Record on Appeal or the Appendix, because the facts are accurately stated in the Decision of District Judge Curtin and are not contested on this appeal. The Appendix shall consist of the Decision and Order of District Judge John T. Curtin dated December 13, 1974, and the following stipulations in order to facilitate processing of the appeal in this matter:

1. The District Court has jurisdiction of the parties and the subject matter of this litigation pursuant to § 301 Labor Management Relations Act (29 U.S.C. 185).

2. Collective bargaining agreements marked Exhibits "A" and "B" (attached to the Complaint) are valid and apply to the dispute herein.

3. The International Union authorized and directed officers of Local Unions No. 1874 and No. 3732 (the "production and maintenance" locals) and their members employed by the Company under the coverage of Exhibits "A" and "B" above, not to cross the picket lines established at the Company's facilities by the striking "office clerical-technical" local unions and the International Union.

4. The strike and picket line established, as aforesaid, by the International Union and the "office clerical-technical" locals are bona fide, primary and legal.

5. The "office clerical-technical" strike and picketing commenced November 16, 1974, and is continuing. The production and maintenance employee work stoppage resulting from the aforesaid acts of the International Union lasted from November 21, 1974 through December 15, 1974; but may be resumed at any time in the near future at the direction of the International Union, or otherwise.

Dated: January 7, 1975.

JEREMY V. COHEN, ESQ.,
Flaherty, Cohen, Grande & Randazzo, P.C.,
Attorneys for Appellant.

THOMAS P. McMAHON, ESQ.,
McMahon & Crotty,
Attorneys for Appellees.

Supreme Court, U. S.
FILED
SEP 26 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;

LOCAL UNION No. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;

LOCAL UNION No. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

Respondents' Memorandum Concurring that Certiorari Should be Granted

Of Counsel:

BERNARD KLEIMAN,
General Counsel
United Steelworkers of America, AFL-CIO
Five Gateway Center
Pittsburgh, Pennsylvania 15222

GEORGE H. COHEN
Bredhoff, Cushman, Gottesman & Cohen
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Respondents.

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al.*,

Respondents.

Respondents' Memorandum Concurring that Certiorari Should be Granted

The Respondent Unions and their named individual officers (hereinafter "the Union") consents to Petitioner's request that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on May 1, 1975. This case squarely poses the precise issue concerning which there presently exists a major irreconcilable conflict within the Circuits—namely, whether where a union enters into a collective bargaining agreement which contains a no strike

clause and a provision for resolving contract disputes through a grievance-arbitration procedure and that union thereafter engages in a strike solely out of deference to another union's lawful picket line at a place of employment where employees represented by both unions work, a federal district court has authority under § 301(a) of the Labor-Management Relations Act of 1947, 29 U.S.C. § 185(a), to enjoin the strike or is precluded from granting injunctive relief by § 4 of the Norris-LaGuardia Act of 1932, 29 U.S.C. § 104?

The decision of the court below (unofficially reported at 89 LRRM 2303) was that in the above-described circumstances an anti-strike injunction was foreclosed by § 4, Norris-LaGuardia. The Fifth and Sixth Circuits are aligned with the Second. See, *Amstar Corp.* v. *Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,* 468 F.2d 1372 (1972) and *Plain Dealer Publishing Co.* v. *Cleveland Typographical Union et al.* (—— F.2d ——, 90 LRRM 2110, decided August 15, 1975). In our view the decisions of all three Circuits are consistent with, and indeed compelled by, the rationale of this Court's holdings in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970) and *Gateway Coal Company* v. *UMW,* 414 U.S. 368 (1974).[1]

But the fact is that four other Circuits have reached a contrary conclusion. See, *Napa Pittsburgh, Inc.* v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926,* 502 F.2d 321 (3d Cir. 1974) (en banc), *cert. denied,* 43 U.S.L.W. 3328 (Dec. 9, 1974); *Island Creek Coal Co.* v. *UMWA,* 507 F.2d 650 (3d Cir. 1975);

[1] Petitioner disagrees. It contends (memo pp. 7-12) that the decision of the court below incorrectly construed and applied the governing principles of federal labor law enumerated in those decisions.

Monongahela Power Co. v. *Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC,* 484 F.2d 1209 (4th Cir. 1973); *Pilot Freight Carriers Inc.* v. *Local 391 Teamsters,* 497 F.2d 311 (4th Cir. 1974), *cert. denied,* 419 U.S. 869 (1974); *Armco Steel Corp.* v. *UMW,* 505 F.2d 1129 (4th Cir. 1974); *Inland Steel Company* v. *Local Union No. 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir. 1974); and *Valmac Industries, Inc.* v. *Food Handlers Local 425,* —— F.2d ——, 89 LRRM 3073 (8th Cir. July 29, 1975).

The foregoing attests not only to the existence of a conflict concerning an important substantive issue in the administration of our federal labor policy but also to the frequency with which this precise problem presently is recurring.

Finally, while it is our understanding that a petition for a writ of certiorari was recently filed in *UMW* v. *Island Creek Coal Co.* (No. 74-1573), we believe that the instant case poses most squarely the legal issue which has given rise to the conflict documented above and, therefore, constitutes the best vehicle for resolving that issue.

CONCLUSION

For the foregoing reasons, Respondents join with Petitioner in requesting that the instant case be reviewed by this Court .

Of Counsel:

BERNARD KLEIMAN,
General Counsel
United Steelworkers of America, AFL-CIO
Five Gateway Center
Pittsburgh, Pennsylvania 15222

Respectfully submitted,

GEORGE H. COHEN
Bredhoff, Cushman, Gottesman & Cohen
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Respondents.

Supreme Court, U. S.
FILED
DEC 8 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL AS INTERNATIONAL PRESIDENT; MITCHEL F. MAZUCA, IND. AND AS DISTRICT DIRECTOR; JOHN GRUKA, IND. AND AS INTERNATIONAL REPRESENTATIVE OF UNITED STEELWORKERS OF AMERICA, AFL-CIO;

LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; VALENTINE F. ZIZZI, IND. AND AS PRESIDENT; VALENTINE OLEJNICZAK, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; KERMIT HASELEY, IND. AND AS PRESIDENT; AND ALFRED LIGAMMARI, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONER

JEREMY V. COHEN,
Attorney for Petitioner,
1016 Liberty Bank Building,
Buffalo, New York 14202.

FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
Of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-343-8457

INDEX.

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	2
Statement of the Case	3
Summary of Argument	6
Argument	8
I. The Court of Appeals incorrectly construed and applied federal labor policy in conflict with decisions of this Court	8
A. Federal Policy Encourages Arbitral Settlement of Industrial Disputes through Enforcement of Labor Agreements	8
B. Federal Policy Encourages Arbitral Settlement of Industrial Disputes Through Enforcement of No-Strike Obligations	13
II. The District Court had authority under § 301 to enjoin the sympathy strike conduct pending arbitration of the contractual dispute involved	18
Conclusion	22

AUTHORITIES CITED.

Cases.

Amstar Corporation v. Amalgamated Meatcutters & Butcher Workmen, 468 F.2d 1372 (5th Cir. 1972)	9
Armco Steel Corp. v. UMWA, 505 F.2d 1129 (4th Cir. 1974); Cert. denied 90 LRRM 2554 (U.S. Oct. 6, 1975)	14

Page

Arnold Co. v. Carpenters Union, 417 U.S. 12 (1974) 7, 21
Avco Corp. v. Local 787, 459 F.2d 968 (3d Cir. 1972) 10
Boys Markets Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970) 5, 7, 8, 13, 14, 15 16, 18, 19, 21, 22
Brotherhood of Railway Trainmen v. Chicago River and Indiana Railroad Co., 353 U.S. 30 (1957) ... 17, 18
Dowd Box Co. v. Courtney, 368 U.S. 502 (1962) 11
Drake Bakeries, Inc. v. Local 50, American Bakery & Confectionary Workers, 370 U.S. 254 (1962) 12
Emery Air Freight Corp. v. Local 295 Teamsters, 449 F.2d 586 (2d Cir. 1971); Cert. denied 405 U.S. 1006 8
Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974) 7, 14, 15, 16, 18, 19, 20
Hyster Co. v. Independent Towing and Lifting Machine Assn., 519 F.2d 89 (7th Cir. 1975) 9
Inland Steel Co. v. Local 1545 UMWA, 505 F.2d 293 (7th Cir. 1974) 9
Island Creek Coal Co. v. UMWA, 507 F.2d 650 (3d Cir. 1975); Cert. denied 90 LRRM 2554 (U.S. Oct. 6, 1975) 16
Monongahela Power Co. v. IBEW, 484 F.2d 1209 (4th Cir. 1973) 14
Monroe Sandler Corp. v. Livingston, 377 F.2d 6 (2d Cir. 1967); Cert. denied 389 U.S. 831 (1967) 12
Morning Telegraph v. Powers, 450 F.2d 97 (1971) 20
NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, 502 F.2d 321 (3d Cir. 1974) *(en banc)* Cert. denied 419 U.S. 1049 (1974); rehearing denied 419 U.S. 1117 (1975) 21
NLRB v. Rockaway News Supply Co., 345 U.S. 71 (1953) 14
Northwest Airlines Inc. v. Air Line Pilots Assn., 442 F.2d 246, aff'd on rehearing 442 F.2d 251 (8th Cir.); Cert. denied 404 U.S. 871 (1971) 17, 18

Page

Pilot Freight Carriers, Inc. v. Local 391 Teamsters, 497 F.2d 311 (4th Cir. 1974); Cert. denied 419 U.S. 869 (1974) 16
Plain Dealer Publishing Co. v. Typographical Union No. 53 *et al.*, 520 F.2d 1220 (6th Cir. 1975); Petition for Cert. filed (U.S. Oct. 2, 1975) (No. 75-565) 9
H. K. Porter Co., Inc. v. Local 37, United Steelworkers of America, 400 F.2d 691 (4th Cir. 1968) 12
Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) 6, 7, 9, 13
Standard Food Products Corp. v. Brandenburg, 436 F.2d 964 (1970) 20
Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95 (1962) 10, 12
Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957) 10, 12
United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960) 11, 15
United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) 11
United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960) 10
Valmac Industries, Inc. v. Food Handlers Local 425, 519 F.2d 263 (8th Cir. 1975); Petition for Cert. filed (U.S. Oct. 31, 1975) (No. 75-647) 19
Wilmington Shipping Co. v. International Longshoremen's Association, ... F.2d .... (4th Cir. 1974); 86 LRRM 2846; Cert. denied 95 S.Ct. 498 (1974) 16

IV.

Statutes.

	Page
Labor Management Relations Act (61 Stat. 136 *et seq.*):	
29 USC 173 (d)	6, 10, 18
29 USC 185 (a)	2, 10
Norris-LaGuardia Act (47 Stat. 70 *et seq.*):	
29 USC § 104	2, 5, 6, 7, 9, 13, 16, 17, 20
29 USC §§ 107-112	8, 9

Miscellaneous.

75 Cong. Rec. 5478-79 (1932)	9
U.S. Department of Labor Bulletin No. 1777 (1973)	20

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

BUFFALO FORGE COMPANY,

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v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO, *et al.*,

Respondents.

On Writ of Certiorari To The United States Court of Appeals For The Second Circuit

BRIEF FOR THE PETITIONER

Opinions Below

The opinion of the United States Court of Appeals for the Second Circuit is reported at 517 F. 2d 1207 and is reprinted at App.A, pp. 1a-9a, to the Petition herein. The opinion of the United States District Court for the Western District of New York is reported at 386 F.Supp. 405 and is reprinted at App.B, pp. 10a-19a, to the Petition herein.*

* The opinions of the Courts below are printed as appendices to the Petition herein and are not separately printed in the Single Appendix. References to the Single Appendix are designated "A. ....."

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the Court of Appeals was entered on May 1, 1975. On September 2, 1975, the Petition herein was filed and was granted on October 20, 1975.

Question Presented

If a union which represents one employee bargaining unit, and the employer, enter into a binding collective bargaining agreement that contains both a mandatory arbitration procedure to resolve disputes between the employer and the union arising out of the agreement, and an unequivocal "no strike" pledge, but the union orders employees in this bargaining unit to stop work and to honor a strike and picketing established by the same union, on behalf of another bargaining unit of employees employed by the same employer at the same facility, does a federal district court have the authority under § 301 of the Labor Management Relations Act to enjoin the union's sympathy strike conduct and to compel arbitration of the dispute as to whether the union's conduct violates the collective bargaining agreement?

Statutes Involved

This case involves § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, as well as § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a). These provisions are set forth at App.A, pp. 2a, 3a, footnotes 1 and 2, of the Petition.

Statement of the Case

Federal Jurisdiction

The Buffalo Forge Company, petitioner, pursuant to § 301 of the Labor Management Relations Act (29 U.S.C. § 185), brought this action against the United Steelworkers of America ("International Union"), two affiliated local unions and various officers and agents of those labor organizations, for compensatory damages and other relief, including injunctive relief and an order directing arbitration, as a result of the unions' alleged breach of no strike clauses contained in an effective collective bargaining agreement, which was binding on all the parties to this litigation (A. 2-13).

Statement of Facts

The Company is engaged in the manufacture and sale of pumps and air handling equipment at three separate plants and office facilities in the Buffalo, New York area. For many years, the International Union and its affiliated locals 1874 and 3732 have represented the Company's production and maintenance employees under successive collective bargaining contracts (App.A, p. 5a; App.B, p. 12a). The current contract, by its terms, remained in full force and effect until September 28, 1975 (A. 21).

The International Union and two other affiliated local unions (not parties to this action) represent the Company's office clerical and technical employees who are employed at the Company's three Buffalo area facitilies (App.A, p. 5a). On November 16, 1974, in negotiating their first agreement with the Company, the International Union and the office-technical local unions struck the Company and established picket lines at all three of the Company's Buffalo area facilities (App.A, p. 5a). That strike and picketing by the International Union and the office-technical locals are bona

fide, primary and legal, and are continuing (A. 24-25; App.A, pp. 5a-6a).

On November 18, 1974, the production and maintenance employees at one of the plants refused for the day to cross the picket lines there. On November 20, 1974, the Company learned that a production and maintenance employee work stoppage at all three plants was scheduled by the respondent unions for the following morning. The Company sent telegrams to officers of the unions, which set forth the Company's position that a work stoppage would be in violation of the collective bargaining agreement, and offered to arbitrate any dispute involved (A. 22-23; App.B, p. 16a).

From November 21 through December 15, 1974, at the admitted direction and instruction of the International Union, the local unions and the production and maintenance employees honored the picket lines and engaged in a work stoppage at all three of the Company's plant facilities (A. 25; App.B, p. 16a). Manufacturing operations at the Company's three plants were completely halted (App.B, p. 13a). The production and maintenance employees returned to their jobs on Monday, December 16th; the next regular work day after the district court issued its Decision and Order denying the Company's request for a preliminary injunction (App.A, p. 5a).

At all times material herein, labor agreements covering the production and maintenance employee bargaining units were in effect (A. 25). The agreements are between the Company and United Steelworkers of America, AFL-CIO, on behalf of itself and members of the local unions (A. 13-14). The collective bargaining agreements are valid and apply to the dispute herein (A. 25). These agreements are signed by representatives of both the International and local unions, as well as the Company (A. 21-22).

The agreements contain a detailed grievance procedure and a broad-scope arbitration clause which mandates final and binding arbitration for "differences . . . between the Company and any employee covered by this Agreement as to the meaning and application of the . . . Agreement or . . . trouble of any kind [arising] in the plant." (A. 17-20). The intention to achieve and maintain responsible relationships between the Unions and the Company is also underscored in the first section of the Agreement (A. 14-15).

Not only does the grievance-arbitration clause expressly mandate recourse to its dispute settlement procedures rather than work stoppages (A. 17), but the responsibilities of the Unions and the employees not to engage in strike, work stoppages or "any such activities" are expressly delineated in a section entitled "Responsibilities of the Parties" (A. 15-16).

Additionally, the Agreements establish the regular work schedules of employees (A. 16-17); and, in addition to a "Management Rights" clause (A. 20), expressly reserve management's rights to notify employees not to report for work (A. 17).

The Proceedings Below

The District Court denied the Company's application for a temporary restraining order and a preliminary injunction and an arbitration order. The Court held that it was deprived of jurisdiction by § 4 of the Norris-LaGuardia Act to grant an injunction against the work stoppage generated by the defendant unions' order to their members to observe picket lines established by the International Union and two other subordinate local unions. The principal basis for that holding was the Court's conclusion that no "Boys Markets" injunction could issue against the work stoppage because it was not a strike "over an underlying grievance".

On appeal, the Court of Appeals affirmed the District Court's order on May 1, 1975, principally because the Court interpreted prevailing federal labor policy as permitting injunctions "only" against strikes which were "over" an arbitrable grievance raised by unions or employees under a collective bargaining agreement.

Summary of Argument

This case raises important questions concerning the interplay between § 4 of the *Norris-LaGuardia Act* and § 301 and § 203(d) of the *Labor-Management Relations Act*. The issues are presented in the context of a "sympathy" work stoppage which was initiated by the respondent unions during the term of an effective labor agreement which contained a broad, mandatory arbitration procedure and an expressed, unequivocal no-strike obligation.

The ban on judicial interference in strikes arising from labor disputes was intended to promote the institution of collective bargaining. § 4 of *Norris-LaGuardia* does not invariably bar injunctive relief and that Act in any event, has not been interpreted and applied as an isolated factor of federal labor relations policy.

Federal labor relations policy is completely effectuated when the collective bargaining agreement contains both a provision for arbitration of disputes and an absolute prohibition of strikes. The parties' agreement, here, is such agreement; the result of the encouragement and promotion by statute and the substantive law developed under § 301. However, the Court of Appeals for the Second Circuit has denied the Company effective and swift enforcement of the no-strike obligation, although the Court would grant the Union specific performance of the agreement to arbitrate. Contrary to the principles established under § 301 litigation, the Appellate Court has adhered more to the analysis of *Sinclair*, which has been soundly rejected by this Court in its decision in *Boys Markets*, and more recently, in *Gateway* and *Arnold v. Carpenters*. A literal reading and application of *Norris-LaGuardia* defeats one of the core purposes of federal regulations and impairs the requirement that collective bargaining agreements be equally binding and enforceable on both labor and management. It is the role of the judiciary to enforce these negotiated agreements on behalf of, as well as against, labor organizations to secure industrial peace.

Statute and the decisions of this Court have protected and enforced the sanctity of the collective bargaining agreement. These obligations, although contained in private labor relations agreements, are as enforceable as the similar statutory provisions of the *Railway Labor Act*. In the latter case, despite § 4 of *Norris-LaGuardia*, the no-strike obligation was enforced and the parties' disagreement was routed to the arbitration procedure endorsed by the statute.

The well-known presumption of arbitrability of labor disputes arising under labor contracts has been uniformly applied in favor of arbitration; yet, the Court of Appeals has presumed that the contract dispute over the scope of the contractual no-strike clause, which arose between these parties, was not arbitrable. That determination directly conflicts with the decisions of this Court which apply that presumption whether the 301 litigation was one for damages or equitable relief. A contrary result cannot be justified under any principles of fundamental fairness or mutuality of remedy.

The scope of the agreement to arbitrate and the contractual no-strike obligation are matters of contract and disputed application of such agreements are matters of contract interpretation to be resolved by arbitration, unless the contract expressly negates such an obligation. In the instant case, the parties' agreement contains a broad-scope arbitration clause which certainly covers the underlying dispute. Until the par-

ties have resolved that dispute through contractually agreed-upon procedures, the union has no equitable or legal standing on which to insist that it is being stripped of its strike weapon without justification; especially since the remedial injunction merely enforces that to which the union has already agreed. Although *Boys Markets* literally involves a strike over a grievance, the policy reasons favoring the availability of injunctive relief are equally compelling in this case.

ARGUMENT

I. The Court of Appeals incorrectly construed and applied federal labor policy in conflict with decisions of this Court.

In the circumstances of this case, the decision of the Court of Appeals that federal labor policy favoring arbitration and industrial disputes pertaining to the interpretation and application of collective bargaining agreements does not support enforcement of an express no-strike obligation conflicts with the basic principles enunciated in applicable decisions of this Court.

A. Federal Policy Encourages Arbitral Settlement of Industrial Disputes through Enforcement of Labor Agreements

Congress passed the *Norris-LaGuardia Act* in 1932, as a reaction to the wide-spread misuse by federal courts of injunctions in certain labor-management controversies. The Act prohibited federal courts from issuing injunctions in "labor disputes" and provided strict procedural safeguards in those cases wherein injunctions were appropriate.[1] The wording of

[1] 29 U.S.C. §§ 107-112. *Emery Air Freight Corp. v. Local 295 Teamsters*, 449 F.2d 586 (2d Cir. 1971); Cert. denied 405 U.S. 1006.

the Act itself reveals that the core purpose of the Statute was to eliminate jurisdiction of the federal courts over *lawful* strikes in labor disputes. Injunctions are still appropriate when "unlawful acts have been threatened . . . or have been committed . . ."[2]

The Court of Appeals, below, and the Courts of Appeals for the 5th, 6th and 7th Circuits[3] have erroneously concluded, in the circumstances of this case, that §4 of *Norris LaGuardia* remains the dominant policy of federal labor regulatory scheme despite the subsequent enactment of the *Labor-Management Relations Act* and the subsequent determinations of this Court that §4 of *Norris-LaGuardia* must be accommodated with the core purposes of §301 of the later enactment, so that "the obvious purpose in the enactment of each is preserved."[4] This accommodation requires "only that the anti-injunction policy of *Norris-LaGuardia* not intrude into areas, not vital to its ends, where injunctive relief is vital to a purpose of §301; it does not require unconditional surrender".[5]

As we show under Point II, no such "unconditional surrender" is proposed or will result from a grant of the relief requested by petitioner, notwithstanding the Court of Appeals expressed concern that it is "difficult to conceive of any strike which could not be enjoined" (App.A, p. 8a).

[2] 29 U.S.C. §107(a). See also Representative LaGuardia's remarks, 75 Cong. Rec. 5478-79 (1932).

[3] See *Amstar Corporation v. Amalgamated Meatcutters & Butcher Workmen*, 468 F. 2d 1372 (5th Cir. 1972); *Plain Dealer Publishing Co. v. Typographical Union No. 53 et al.*, 520 F. 2d 1220 (6th Cir. 1975), *petition for cert. filed* (U.S. Oct. 2, 1975—No. 75-565); *Hyster Co. v. Independent Towing and Lifting Machine Association* 519 F. 2d 89 (7th Cir. 1975); but cf. *Inland Steel Co. v. Local 1545 UMWA* 505 F. 2d 293 (7th Cir. 1974).

[4] *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 217 (1962) (Brennan J., dissenting).

[5] Id. at 225.

As evidenced by the passage of the *Labor Management Relations Act*, in 1947, a federal policy had emerged "to encourage settlement of labor disputes through enforcement of compulsory arbitration agreements" *Avco Corp. v. Local 787*, 459 F. 2d 968, 970 (3d Cir. 1972); *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 105 (1962). Section 203(d) of that Act provided that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement".[6]

Section 301(a) of that Act granted federal courts jurisdiction over "suits for violation of contracts between an employer and a labor organization".[7]

In the twenty-seven years since these statutes were enacted, this Court has formulated an expansive body of federal labor relations law, grounded upon the basic statutory premise that industrial stability is best fostered by the substitution of arbitration for strikes.

In 1957, this Court upheld the jurisdiction of the federal courts, under §301, to specifically enforce an arbitration agreement contained in a collective bargaining agreement. The Court, in *Lincoln Mills*, concluded that §301 was intended by Congress as a remedy for the violation of no-strike agreements and that arbitration agreements were the *quid pro quo* for such no-strike agreements.[8]

In *United Steelworkers of America v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960) this Court ruled that Federal courts should order specific performance of arbitration agreements even where the grievance involved the contracting out of

[6] 29 U.S.C. §173(d).

[7] 29 U.S.C. §185(a).

[8] *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 455 (1957).

work and the contract excluded from arbitration matters which were strictly a function of management. The Court announced a broad presumption in favor of arbitration.

In *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960), this Court ruled that when parties had agreed to submit all questions of contract interpretation to the arbitrator, the function of the court is limited to determining whether the claim on its face is governed by the contract. In such cases, the courts should not weigh the merits but refer the contractual claims to arbitration.

In these two cases as in *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) this Court, in conformity with the statutory mandate, established arbitration as the keystone of Federal labor policy. In each case, this Court indicated that its decisions were based on the contractual consent of each of the parties to utilize arbitration to settle specific disputes. Arbitration cannot be imposed on parties who have not bargained for and accepted it. Thus, the rule enunciated in *Steelworkers v. American Mfg. Co.*, applies "when the parties *have agreed* to submit *all* questions of contract interpretation to the arbitrator." 363 U.S. at 567-68. [Emphasis added]

Subsequently, the Court observed, in *Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 (1962):

> "The Labor Management Relations Act of 1947 represented a far-reaching and many-faceted legislative effort to promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process. It was recognized from the outset that such an effort would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance that the contract they had negotiated would be honored. Section 301(a) reflects congressional recognition of the vital importance of assuring the enforceability of such agreements".

If a labor agreement contains a broad no-strike clause, a claimed breach and the scope of the prohibition are proper subjects for arbitration. "The rule is that unless the parties expressly exclude a matter, the Court will conclude that they intended to submit it to arbitration."[9]

The applicable labor agreements in this case clearly spell out a broad, unequivocal prohibition which the unions violated. Section 26 contains an explicit prohibition of work stoppages concerning contractual grievances. Section 14 b., a section containing no explicit references to any other term of the agreement, prohibits all strikes, work stoppages, interruptions and impeding of work during the term of the agreement; and prohibits authorization, instigation, aid or condonation of "any such activities" by officers or representatives of the International and local unions. The *only* express contractual exception to these prohibitions are "unsuccessful efforts" by union agents to prevent and terminate wildcat strikes.

These agreements also provide for final and binding arbitration of disputes (whether raised by the Company, the Unions or employees) "as to the meaning and application of the provisions of this agreement" as well as disputes which arise out of "trouble of any kind . . . in the plant". These provisions are certainly broad enough to cover the underlying controversy herein.

The theme of federal policy that the federal courts have fashioned since *Lincoln Mills* has forcefully emphasized over and over again, the necessity of mutual and equal enforceability of contract provisions and the importance of substituting the arbitral process for the strike when a contractual

[9] *Monroe Sandler Corp. v. Livingston*, 377 F.2d 6, 9-10 (2d Cir. 1967); Cert. denied 389 U.S. 831 (1967); *Drake Bakeries, Inc. v. Local 50, American Bakery and Confectionary Workers*, 370 U.S. 254 (1962); *H. K. Porter Co., Inc. v. Local 37, United Steelworkers of America*, 400 F.2d 691 (4th Cir. 1968); *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95 (1962).

dispute develops over the meaning and application of the terms of the collective bargaining agreement. The decision of the Court of Appeals in this case does not adhere to these principles.

B. Federal Policy Encourages Arbitral Settlement of Industrial Disputes Through Enforcement of No-Strike Obligations

In *Boys Markets Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970), this Court recognized that a pro-arbitration policy would be frustrated unless the federal courts possessed the power to compel arbitration and enjoin breach of contract strikes, if the agreement to arbitrate the dispute could be established and if an injunction would have been proper but for *Norris-LaGuardia*. The holding was made in a factual context in which the union had engaged in a strike in furtherance of a grievance initiated by the union over the interpretation and application of certain contract provisions. The decision insured that equitable remedies were available, in the federal courts, for enforcement of arbitration agreements and their accompanying no-strike obligations. In that context, the court observed that the *Norris-LaGuardia Act* "was responsive to a situation totally different from that which exists today".[10]

§ 2 of *Norris-LaGuardia*[11] shows one of the primary concerns of Congress was to insure workers the right "to exercise actual liberty of contract" and to protect "concerted activities for the purpose of collective bargaining". In *Sinclair*[12], the employer argued that a literal application of § 4 of the Act to ban injunctions against breach of contract strikes would

[10] 398 U.S. at 250.

[11] 29 U.S.C. § 102.

[12] *Sinclair Refining Co. v. Atkinson, supra*, at 200-201.

defeat one of the primary enacting purposes. The argument that Congress intended to confer the power upon the federal courts to accommodate *Norris-LaGuardia* with § 301 purposes was rejected as "startling"[13], although the Court's opinion acknowledged that these arguments were premised on current "assessments of the prevailing circumstances of contemporary labor relations" rather than upon the literal wording of the statute written by Congress thirty years earlier.[14]

More recently, this Court expanded the *Boys Markets* holding in *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974). There, the Court applied the presumption of arbitrability to "safety disputes" even though such disputes were not specifically referred to in the grievance and arbitration provision of the agreement; and it enjoined the work stoppage on the basis of an implied no-strike obligation, even though § 502 of the *Labor Management Relations Act* was asserted to be a statutory grant of a right to engage in a work stoppage.[15]

We perceive particular significance in the reversal of the Court of Appeals in *Gateway* for additional reasons. In its affirmance of the District Court's injunction pending arbitration, this Court's opinion placed greater emphasis upon the union's no-strike obligations than in *Boys Markets*. In the earlier decision, the Court's main emphasis was placed upon the federal pro-arbitration policy and the duty to arbitrate, and the injunction was a remedial device to protect the

[13] Id. at 209.

[14] Id. at 201-202.

[15] Similarly, and in view of the agreement provisions herein, the respondents' reliance on § 7 of the *National Labor Relations Act* is misplaced. *NLRB v. Rockaway News Supply Co.*, 345 U.S. 71, 80 (1953). Accord, *Monongahela Power Co. v. IBEW*, 484 F. 2d 1209 (4th Cir. 1973). *Armco Steel Corp. v. UMWA*, 505 F. 2d 1129 (4th Cir. 1974), *Cert. denied* 90 LRRM 2554 (U.S. Oct. 6, 1975).

jurisdiction of the arbitrator, rather than in the nature of specific performance of the no-strike obligation.

In its *Gateway* opinion, the Court majority again expressed its high regard for the policy favoring labor arbitration, but the main thrust of the opinion dealt with the nature of the no-strike obligation. This emphasis is demonstrated by Mr. Justice Powell's observation that separation of the no-strike obligation from the arbitration agreement presents two "analytically distinct" issues, each of which "depends on the intent of the contracting parties".[16] Arbitration, too, is a matter of contract, and the parties "are free to make that promise [to submit disputes to arbitration] as broad or as narrow as they wish . . ."[17]

> "It would be unusual, but certainly permissible, for the parties to agree to a broad mandatory arbitration provision yet expressly negate any implied no-strike obligation. Such a contract would reinstate the situation commonly existing before our decision in *Boys Market*. Absent an explicit expression of such an intention, however, the agreement to arbitrate and the duty not to strike should be construed as having *coterminous application*". [Emphasis added] [18]

Thus, the Court's decision contemplated that the parties, in particular factual contexts, could negate a no-strike obligation, express or implied, leaving only an agreement to arbitrate which would be insufficient to authorize a breach of contract strike injunction under *Boys Markets*.

The union in *Gateway* forcefully urged that safety disputes were excepted from the no-strike obligation by a section of

[16] 414 U.S. at 382.

[17] *United Steelworkers of America v. American Mfg. Co.* 363 U.S. at 570 (Brennan J., concurring).

[18] *Gateway Coal Co. v. United Mine Workers, supra* at 382.

the collective bargaining agreement which provided a specific procedure by which the union could close down an "unsafe" area of a mine.[19] This Court disposed of the argument thusly:

> "In any event, whether the Union properly invoked this provision is a *substantial question of contractual interpretation, and the collective bargaining agreement explicitly commits to resolution by an impartial umpire all disagreements as to the meaning and application of this agreement.*" [Emphasis added.][20]

The Court's decision considered and accepted the proposition that the disputed scope of the no-strike obligation formed a "compelling"[21] basis for favoring the availability of equitable intervention in the nature of injunctive relief to enforce a no-strike obligation.[22]

Such an arbitrable dispute would have arisen in *Gateway* not as an "underlying" grievance "over" which the work stoppage was instituted, but as a result of the work stoppage itself. Yet, the Court, below, and those other circuits which also adopted both the literal reading of § 4 of *Norris-LaGuardia* and of *Boys Markets* have identified this causal nexus between the union-initiated grievance and the work stoppage as *the only* justification supporting the jurisdiction of the federal courts to grant injunctive relief in breach of contract strikes.

A substantial error in the Appellate Court's assessment is its failure to acknowledge this Court's past recognition that § 4 of *Norris-LaGuardia* didn't invariably bar injunctive relief,

[19] Id. at 383.

[20] Id. at 384.

[21] Id. at 381.

[22] Accord, *Pilot Freight Carriers, Inc. v. Local 391 Teamsters*, 497 F. 2d 311 (4th Cir. 1974) *Cert. denied* 419 U.S. 869 (1974); *Island Creek Coal Co. v. UMWA*507 F.2d 650 (3rd Cir. 1975); *Cert. denied* 90 LRRM 2554 (U.S. Oct. 6, 1975); *Wilmington Shipping Co. v. Int'l. Longshoremen's Assn.* .... F.2d .... (4th Cir. 1974), 86 LRRM 2846, *Cert. denied* 95 S.Ct. 498 (1974).

and the significance of this Court's accommodation of § 4 and the *Railway Labor Act.* If the Court of Appeals had adopted the principles of that accommodation, it would have found that judicial enforcement of the *quid pro quo* of the arbitration agreement in the instant case would not have stripped respondent unions of their "primary weapon without substituting a reasonable alternative".[23]

In *Northwest Airlines Inc. v. Air Line Pilots Assn.*, 442 F. 2d 246, aff'd on rehearing 442 F. 2d 251 (8th Cir.), cert. denied, 404 U.S. 871 (1971), an airline sought to enjoin its pilots from honoring a picket line established by another union. The carrier contended that the refusal of its pilots to cross this picket line constituted a violation of an *implied* no-strike clause and was therefore a "minor dispute"[24] which was to be resolved pursuant to the arbitration procedures set forth in the Railway Labor Act. The District Court denied injunctive relief and an order to arbitrate, largely on the same basis as the Appellate Court in the instant case.[25]

> "The 'Minor Dispute' provision of the Railway Labor Act manifestly presumes the existence of some underlying disagreement which has to be resolved and sets forth procedures for doing so without resort to a strike.
>
> "The situation before this Court, however, does not present an underlying dispute between ALPA and NWA over which ALPA in an attempt to achieve a favorable resolution has initiated a work stoppage. The situation presented involves the work stoppage itself as the very basis of the disagreement."

[23] *Brotherhood of Railway Trainmen v. Chicago River and Indiana Railroad Co.*, 353 U.S. 30, 40 (1957).

[24] The definition of a "minor dispute" under the Railway Labor Act is virtually identical to the definition of an arbitrable grievance under the collective bargaining contract here. Minor disputes are defined as: "grievances or other differences arising out of the application or interpretation of an existing collective bargaining argeement . . ."

[25] 325 F. Supp. 994, 997 (D.Minn. 1970); App.A. pp. 7a-9a.

The Eighth Circuit reversed, ordered arbitration and enjoined the work stoppage. The Court held:[26]

> ". . .[W]e feel that NWA is correct in arguing that the AFPA contract *can arguably be interpreted to prohibit the Association from instructing its members to respect the BRAC picket lines.* The dispute is, thus, in our view, a minor one which must be submitted to the System Board of Adjustment". [Emphasis added]

The fact that the decision arose under the Railway Labor Act does not impair its applicability to the present case; inasmuch as this Court, in *Boys Markets*, turned to its earlier decision in *Chicago River* as direct support for its holding that the issuance of an injunction in cases such as this does not offend the policies of the *Norris-LaGuardia Act.*[27]

II. The District Court had authority under § 301 to enjoin the sympathy strike conduct pending arbitration of the contractual dispute involved.

Current federal labor policy, under § 301, places the force of law behind labor-management agreements. The District Court would have been fully warranted in asserting its jurisdiction to specifically enforce the unequivocal no-strike obligation expressed in the labor agreements here. This Court has noted that § 301 empowers a federal court to enjoin violations of a contractual duty not to strike[28] and exercise of such jurisdiction is firmly grounded in the Congressional policy embodied in § 203(d) of the Labor-Management Relations Act.[29]

The Second Circuit's holding that the grievance must be the underlying cause of the stoppage construes *Boys Markets* too

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[26] 442 F. 2d at 248

[27] 398 U.S. at 252

[28] *Gateway Coal Co. v. United Mine Workers*, *supra*, at 381.

[29] 29 U.S.C. § 173(d).

literally. First, it fails to consider the particular factual context in which this Court's decision was rendered. Second, "it makes little sense to argue that because the work stoppage precipitated the dispute, it was not a work stoppage 'over' a grievance which the parties were contractually bound to arbitrate". *Valmac Industries Inc.*, 519 F.2d 263 (8th Cir. 1975), petition for cert. filed (U.S. Oct. 31, 1975; No. 75-647). This is especially true where, as here, the Company offered to arbitrate the union sympathy strike plan before the stoppage occurred. Finally, in its narrow reading of the *Boys Markets* holding, the Appellate Court has erroneously adopted a *double standard* of arbitrability which presumes union or employee initiated grievance claims *are* arbitrable, but employer initiated grievance claims over disputed contractual provisions *are not.* Its opinion is replete with indications that union-induced work stoppages are enjoinable only when the stoppage is *over* a contractual grievance initiated by the Union or employees.

This double standard of arbitrability produces different results depending on the type of § 301 litigation involved. In an employer's suit for damages under § 301, a presumption *in favor* of arbitrability is applied which would require a stay pending arbitration; but in an employer's suit for equitable relief under the same statute, a presumption *against* arbitrability is applied which results in denial of injunctive relief. Such a biased approach cannot be justified under any principle of fundamental fairness or mutuality of remedy.

Moreover, in *Boys Markets* and *Gateway*, this Court specifically embraced the presumption in favor of arbitrability, in the context of an employer's suit for injunctive relief, and found "the policy reasons favoring the availability of injunctive relief . . . equally compelling" in damage and injunctive actions based on breach of the no-strike obligation.[30]

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[30] 414 U.S. at 381, fn. 14.

Denial of the specific performance remedy fosters disregard for express no-strike obligations and strong incentives against participating in meaningful bargaining are encouraged. The damage done to the policies embodied in § 301 is greater if relief is denied than if it is granted. Currently, one-third of all strikes, annually, are breach of contracts strikes[31]. In 1971, such strikes accounted for a higher percent of all strikes than strikes which occurred during negotiations of first labor contracts[32]. The institution of collective bargaining, so critical to the core purposes of national labor policy, is not served by this magnitude of disrespect for collectively bargained no-strike obligations.

The opinions of the Court of Appeals, and those other circuits in accord, indicate less than healthy respect for the institution of collective bargaining in the expression of "concern" that specific performance of the no-strike obligation in the sympathy strike context herein will subject virtually all strikes to the judicial intervention denied by § 4 *Norris-LaGuardia*.

The scope of the agreement to arbitrate and the contractual no-strike obligation is a matter of contract. The parties may expressly negate the obligation to arbitrate certain labor disputes; or agree to a broad mandatory arbitration, yet expressly negate any implied no-strike obligation; or provide a permissive rather than mandatory duty to arbitrate and contractually preserve a right to strike or lockout. Whatever the parties negotiate, the scope of their obligations to one another, arising out of the contractual relationship, "depends on the intent of the contracting parties"[33]. The obvious point is that

[31] U.S. Department of Labor Bulletin No. 1777, "Analysis of Work Stoppages 1971", at 5, 23-24 (1973).

[32] Idem

[33] *Gateway Coal Co. v. United Mine Workers, supra,* at 382; Cf. *Standard Food Products Corp. v. Brandenburg,* 436 F.2d 964, 965 (2nd Cir. 1970); *Morning Telegraph v. Powers,* 450 F.2d 97 (2nd Cir. 1971).

an injunction cannot issue absent a sufficient contractual predicate, for, otherwise, the sacrifice of *Norris-LaGuardia* rights is without justification. By leaving to the courts, under § 301, the task of merely enforcing that to which the parties agreed, Congress manifested the federal regulatory policy which the courts are to implement. Those who urge that it is for Congress and not the judiciary to reach this result have failed, we feel, to absorb the full impact of *Boys Markets*[34].

Requiring the parties to submit the merits of the claimed breach of contract to their own dispute resolving procedures encourages utilization of those procedures. Injunctive relief, conditioned upon prompt arbitration of the dispute, does not nullify the union's right to establish or honor a picket line; it "only suspends the exercise of the right until its existence is established by an arbitrator's decision." NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, 502 F.2d at 324. "The assurance of swift and effective relief provides incentive to eschew economic weapons in favor of binding arbitration and no-strike clauses". *Arnold Co. v. Carpenters Union,* 417 U.S. 12, 18 (1974).

A narrow inquiry into whether a strike in breach of contract *was caused* by an arbitrable matter, based on an assumption that only an order requiring arbitration of the precipitating cause of the strike can encourage arbitration, misses the point. What can be more fundamental to a collective bargaining relationship than the scope of a no-strike obligation! Should not the parties be required to resort to the settlement procedures of their relationship to determine the scope of their bargain! In fact, if encouraging and promoting labor arbitration is one of the goals of Section 301, its utilization is fully encouraged when ordered in those cases where the arbitrable dispute may not be the precipitating cause of the work stoppage; but, rather, the work stoppage it-

[34] 398 U.S. at 240-242.

self is of questionable validity under the bargaining agreement. A dispute of that nature goes to the very heart of the collective bargaining relationship and labor arbitration would seem particularly well suited to resolve the difficulty.

Because the *Boys Markets* remedy is so deeply anchored as an aid to arbitral jurisdiction, judicial relief in the nature of specific performance of no-strike obligations without referring the merits of the dispute to arbitration is not warranted. In this context, therefore, *Norris-LaGuardia* retains its vitality; depriving courts of authority to sepcifically enforce no-strike obligations, where the risk of judicial intervention into the merits of the labor dispute in injunction proceedings is great because the parties have deprived arbitration of jurisdiction to resolve the merits of that dipute.

Conclusion

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Second Circuit should be reversed with instructions to direct arbitration of the issue of whether the Unions' conduct violated the terms of the collective bargaining agreement and to enjoin any resumption of the sympathy strike and work stoppage pending arbitration.

Respectfully submitted,

JEREMY V. COHEN,
FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
1016 Liberty Bank Building,
Buffalo, New York 14202,
Attorney for Petitioner.

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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

BUFFALO FORGE COMPANY, *Petitioner,*

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;
LOCAL UNION No. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;
LOCAL UNION No. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO; *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT UNITED STEELWORKERS OF AMERICA, AFL-CIO, [redacted]

J. ALBERT WOLL
ROBERT C. MAYER
736 Bowen Building
815 Fifteenth Street, N.W.
Washington, D. C. 20005
LAURENCE S. GOLD
815 Sixteenth Street, N.W.
Washington, D. C. 20006
Attorneys for AFL-CIO

GEORGE H. COHEN
ELLIOT BREDHOFF
MICHAEL H. GOTTESMAN
ROBERT M. WEINBERG
Bredhoff, Cushman, Gottesman & Cohen
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036
BERNARD KLEIMAN
CARL FRANKEL
RUDY L. MILASICH, JR.
Five Gateway Center
Pittsburgh, Pennsylvania 15222
THOMAS P. McMAHON
1028 Liberty Bank Building
Buffalo, New York 14202
Attorneys for USWA

TABLE OF CONTENTS

Page

COUNTER-STATEMENT OF THE QUESTION PRESENTED 2

COUNTER-STATEMENT OF THE CASE 2

A. The Factual Background 2

B. The Proceedings Below 3

SUMMARY OF ARGUMENT 6

ARGUMENT

Introduction 8

I. *Boys Markets* Established Two Essential Requirements Which Must Be Satisfied Before a Strike Injunction May Issue: (1) The Strike Is in Breach of Contract; (2) The Strike Is Over An Arbitrable Grievance. Neither of These Requirements Can Be Met in This Case. 12

II. Issuance of the Injunction Sought Here Would Require Judicial Repeal of Norris-LaGuardia and Reversal of the Principles of National Labor Policy Expressed in *Boys Markets* ... 22

CONCLUSION 30

TABLE OF AUTHORITIES

Cases

Amstar Corp. v. *Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,* 468 F.2d 1372 (5th Cir. 1972) 5

Associated General Contr. of Ill. v. *Illinois Conf. of Teamsters,* 454 F.2d 1324 (7th Cir. 1972) 25

Boys Markets, Inc. v. *Clerks Union,* 398 U.S. 235 (1970) .... *passim*

Carpenters Union v. *Labor Board,* 357 U.S. 93 (1958) 29

Construction Workers v. *Curry,* 371 U.S. 542 (1963) 15

Emery Air Freight Corporation v. *Local Union 295,* 449 F.2d 586 (2d Cir. 1971) 4, 27

Gary Hobart Water Corp. v. *NLRB,* 511 F.2d 287 (7th Cir. 1975), cert. denied 44 U.S.L.W. 3263 (Nov. 3, 1975) 16

Page

Gateway Coal Co. v. *United Mine Workers,* 414 U.S. 368 (1974) 13, 17

Hyster Company v. *Independent Towing & Lifting Mach. Ass'n.,* 519 F.2d 89 (7th Cir. 1975) 16

Inland Steel Co. v. *Local Union No. 1545, United Mine Workers of America,* 505 F.2d 293 (7th Cir. 1974) 6, 19

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Labor Board v. *Denver Building Trades Council,* 341 U.S. 675 (1951) 25

Liner v. *Jafco, Inc.,* 375 U.S. 301 (1964) 15

Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. *Lucas Flour Co.,* 369 U.S. 95 (1962) 5, 11, 17

Michigan Nat. Bank v. *Michigan,* 365 U.S. 467 (1961) 29

Montana-Dakota Utilities Co. v. *NLRB,* 455 F.2d 1088 (8th Cir. 1974) 16

NAPA Pittsburgh, Inc. v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926,* 502 F.2d 321 (3rd Cir. 1974) (*en banc*), cert. denied 419 U.S. 1049 (1974) 5, 14, 15, 19-22

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Steelworkers v. *Enterprise Corp.,* 363 U.S. 593 (1960) ... 11, 16, 17

Steelworkers v. *Warrior & Gulf Co.,* 363 U.S. 524 (1960). 11, 12, 17

Stockdale v. *Atlantic Ins. Co.,* 20 Wall. 323 (1874) 29

Teamsters v. *Yellow Transit,* 370 U.S. 711 (1972) 7, 9, 24

Textile Workers v. *Lincoln Mills,* 353 U.S. 448 (1957) 8, 11

United States v. *Freeman,* 3 How. 564 (1845) 29

United States v. *Price,* 361 U.S. 304 (1960) 30

United States v. *United Mine Workers,* 330 U.S. 258 (1947) 30

United States Steel Corp. v. *United Mine Workers,* 519 F.2d 1236 (1975) 19

Waterman S.S. Corp. v. *United States,* 381 U.S. 252 (1965) 30

Page

Statutes

Labor-Management Relations Act (61 Stat. 136, 29 U.S.C. §151 *et seq.*):
Section 8(b)(4)(B) 25
Section 208(b) 8
Section 301 ..... *passim*
Section 302 23

National Labor Relations Act as amended (61 Stat. 149, 29 U.S.C. §151 *et seq.*):
Section 10(h) 8

Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. §101 *et seq.*):
Section 4 ..... *passim*

Congressional Materials

75 Cong. Rec. 4929 (1932) 14
75 Cong. Rec. 4935 (1932) 14
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93 Cong. Rec. 6445-6446 (1947) 9
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S. 1479, 94th Cong., 1st Sess. 25, 26, 27, 28
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11 Weekly Compilations of Presidential Documents 1393 (1975).. 28
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Miscellaneous

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Frankfurter and Greene, The Labor Injunction (1930) 14, 15
Williston, Contracts (3rd ed. 1957) 17
Note, 71 Colum. L. Rev. 336 (1971) 22
Note, 88 Harv. L. Rev. 463 (1974) 15, 22
Comment, *Boys Markets Developments in the Third Circuit,* 48 Temple L. Q. 281 (1975) 22

IN THE

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BUFFALO FORGE COMPANY,

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UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;

LOCAL UNION No. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;

LOCAL UNION No. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND FOR AMERICAN FEDERATION OF LABOR AND CONGRESS OF INLUSTRIAL ORGANIZATIONS, As AMICUS CURIAE*

* The parties have consented in writing to the filing of a brief *amicus curiae* by the AFL-CIO. The AFL-CIO and the United Steelworkers of America have filed a motion for leave to file a joint brief.

COUNTER-STATEMENT OF THE QUESTION PRESENTED

Whether the courts below were correct in holding that Norris-LaGuardia precludes injunction of a peaceful strike where the *Boys Markets* requirements that the strike be in breach of contract and over an arbitrable grievance are not met.

COUNTER-STATEMENT OF THE CASE

A. The Factual Background

For many years the United Steelworkers of America, AFL-CIO ("the Union") has represented the production and maintenance (P&M) employees at three of the Buffalo Forge Company's ("the Company") facilities in the Buffalo, New York area under a series of successive contracts (P. 12a).[1] Shortly before the events described herein, the Union was also certified as the exclusive bargaining representative for new bargaining units consisting of the Company's previously unorganized office, clerical and technical (O&T) employees. These O&T workers were employed at the same three locations mentioned above (P. 12a).

The O&T employees had been engaged for months in an effort to negotiate a first collective bargaining agreement with the Company. On November 16, 1974, the O&T employees struck in support of their bargaining demands. Picket lines were established at the Company's production and office facilities (P. 12a). This strike and the accompanying picket line are conceded by the petitioner to be "*bona fide,* primary and legal" (Pet. Br. pp. 3-4).

At that time collective bargaining agreements were in effect covering the P&M employees which contained, *inter alia:* (1) a mandatory procedure for the submission to arbitration by either party of any grievance dispute involving "a question as to the meaning and application of the provisions of th[e] Agreement . . . " (Section 32) (A. 19); and (2) a no strike clause (Section 14(b)), providing in relevant part that "[t]here shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity" (A. 16).

[1] All references to the Appendix shall be designated "A"; the opinions of the courts below are printed as appendices to the Petition For a Writ of Certiorari, and references thereto shall be designated "P".

In the latter part of November 1974, the Union authorized the P&M employees to honor the picket lines of the O&T employees. As a result, a collective refusal to work by the P&M employees—[2] a so-called "sympathy strike"—occurred at each of the Company's three facilities for varying time periods (P. 12a-13a).

B. The Proceedings Below

The Employer responded to this concerted activity by filing the instant §301 suit[3] seeking damages and an injunction against the work stoppage resulting from this refusal to cross the picket line. In the district court, the Company made alternative arguments (see Complaint at A. 7) in an effort to meet the preconditions established by *Boys Markets, Inc.* v. *Clerks Union,* 398 U.S. 235 (1970), for entitlement to an injunction against the work stoppage by the P&M employees: (1) that the work stoppage was caused by a specific in-

[2] The district court noted that "[c]ertain members of the defendant Locals have crossed the picket lines and gone to work" (P. 16a).

[3] Section 301(a), Labor-Management Relations Act, 61 Stat. 136, 156, 29 U.S.C. §185(a), provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

cident on November 18, 1974, which the Company considered to create an "arbitrable" grievance—a supervisor's ordering a truck driver within the P&M unit to drive a non-Company owned vehicle across the O&T picket line (P. 13a-14a); and (2) that the legality of the work stoppage itself was arbitrable.

The court expressly found that the "evidence support[ed] the [Unions'] position" (P. 16a) that the work stoppage did not take place in protest over the November 18 incident (P. 13a-16a), but rather as a direct consequence of the P&M employees' sympathy action supporting the O&T employees' strike for a new agreement. Having so found, the district court determined that the Norris-LaGuardia Act, 47 Stat. 70, 70-71, 29 U.S.C. §104, forbids the issuance of an injunction because the Company had not established that the case comes within the "narrow" exception to that Act established in *Boys Markets:*

> "The *Boys Markets* standards do not apply to this case because there is no arbitrable grievance between the parties" (P. 18a).

On appeal, the district court's findings of fact were not challenged (P. 8a, n. 7). The Court of Appeals affirmed, stating in pertinent part (P. 7a-9a):

> "In assessing the extent to which §301(a) modified the anti-injunction policy of Norris-LaGuardia, we base the tenor of our inquiry on the Court's emphasis in *Boys Markets* on the narrowness of its holding in favor of injunctive relief. *Id.* 398 U.S. at 253, 90 S.Ct. 1583. *Compare* Emery Air Freight Corp. v. Local Union 295, 449 F.2d 586, 588 (2d Cir. 1971). In narrowly construing the exception to §4 of the Norris-LaGuardia Act carved out by §301(a) in the view of the *Boys Markets* Court, then, we take particular note of the various indications in *Boys Markets* and in the *Sinclair Refining* dissent upon which the latter drew that only strikes

over a grievance which the union has agreed to arbitrate are within the scope of the exception. *See, e.g., Boys Markets, supra,* 398 U.S. 235 at 248, 254, 90 S.Ct. 1583; *Sinclair Refining, supra,* 370 U.S. 195 at 217-18, 224-25, 228, 82 S.Ct. 1328. The strike at issue in the instant case is not over a grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

"This distinction is crucial in light of the need, recognized in *Boys Markets* and the *Sinclair Refining* dissent, to reconcile the anti-injunction policy of Norris-LaGuardia with the pro-arbitration policy of the later act. If a strike not seeking redress of any grievance is enjoinable, then the policy of Norris-LaGuardia is virtually obliterated. For since a no-strike provision, if not in fact present in the employment contract, will be implied where the agreement sets up mandatory arbitration machinery, Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co., 369 U.S. 95, 104-06, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962), it is, as the Fifth Circuit has concluded, 'difficult to conceive of any strike which could not be so enjoined.' Amstar Corp. v. Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, 468 F.2d 1372, 1373 (5th Cir. 1972). Undue expansion of the 'narrow' holding in *Boys Markets* may be avoided, on the other hand, by proper attention to the actual threat posed by strikes not over grievances with the employer to the policies promoted by §301(a). A strike not seeking to pressure the employer to yield on a disputed issue is not an attempt to circumvent arbitration machinery established by the collective bargaining agreement. Accordingly, it does no violence to the federal pro-arbitration policy to require federal courts to refrain from enjoining such strikes. *See* Napa Pittsburgh, Inc. v. Automotive Chauffeurs, Parts and Garage

Employees, Local Union No. 926, 502 F.2d 321, 330-31 (3d Cir. 1974) (en banc) (Hunter, J. & Seitz, C. J., dissenting), cert. denied, 419 U.S. 1049, 95 S.Ct. 625, 42 L.Ed.2d 644 (1974); Inland Steel Co. v. Local Union No. 1545, United Mine Workers of America, 505 F.2d 293, 300-01 (7th Cir. 1974) (Fairfield, J., dissenting).

"Since the work stoppage under review is motivated solely by respect for other employees' picket lines and plainly is not aimed at resolving an existing dispute by extra-arbitral means, the district court's order denying a preliminary injunction gave effect to §4 of the Norris-LaGuardia Act without disservice to the policies informing §301(a) of the Labor Management Relations Act. Chief Judge Curtin's application of the two provisions to the context before him comported with the Supreme Court's direction to district courts in its *Boys Markets* opinion to reconcile the two provisions rather than simplistically read a repeal of §4 into the later enactment." (Footnote omitted; emphasis in original.)

SUMMARY OF ARGUMENT

The Norris-LaGuardia Act prohibits federal courts from issuing injunctions against peaceful strikes. In *Boys Markets, Inc.* v. *Clerks Union,* 398 U.S. 235, 253 (1970), this Court, taking care "not [to] undermine the vitality of the Norris-LaGuardia Act," defined a "narrow" area where an injunction against a strike does not detract from the core purpose of Norris-LaGuardia *and* is necessary to vindicate the national labor policy favoring the voluntary settlement of labor disputes by arbitration. Only within this narrow area does *Boys Markets* permit an injunction against a strike. The injunction sought here would violate Norris-LaGuardia without furthering the arbitration process. In place of the "accommodation" between the prohibition against enjoining peaceful strikes and the policy favoring arbitration, petitioner seeks judicial repeal of Norris-LaGuardia whenever it is alleged that a strike is in breach of contract.

In Part I of this brief, we show that issuance of the injunction sought here cannot be justified under the holding and rationale of *Boys Markets.* There, this Court established two prerequisites to the exercise by federal courts of the limited power to enjoin peaceful strikes. Before a *Boys Markets* injunction may issue, a district court must find (1) that the strike is in breach of the collective bargaining agreement, and (2) that the strike is over a grievance which the parties are contractually bound to arbitrate. Neither of these prerequisites—designed to restrict the exercise of such power to circumstances where an injunction does not undermine the core values of Norris-LaGuardia *and* is necessary to vindicate the arbitration process agreed upon by the parties—is met here.

In Part II, we show that to grant the injunction here would constitute a reversal, not an extension, of *Boys Markets.* Petitioner's position reduces to a claim that injunctive relief should be available to enforce a union's contractual commitment not to strike, regardless of whether such relief would further the arbitration process. This very claim was rejected in the dissenting opinion in *Sinclair* v. *Atkinson,* 370 U.S. 195, 215 *et seq.* (1962), which opinion was adopted by the Court in *Boys Markets:*[4]

> ". . . [T]here is no general federal anti-strike policy; and although a suit may be brought under §301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail. * * *"

370 U.S., at 225. See also, *Teamsters* v. *Yellow Transit,* 370 U.S. 711 (1962). Thus, *Boys Markets* established the metes

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[4] 398 U.S., at 249.

and bounds of the judicial power to issue injunctions against peaceful strikes. Those metes and bounds were approved by both the Senate and House of Representatives in 1975 during the progress of the common-situs picketing bill through Congress.

ARGUMENT

Introduction

In §4 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U.S.C. §104, Congress declared that, in any case "involving or growing out of any labor dispute," federal courts were prohibited from enjoining, *inter alia,* peaceful strikes. Congress' purpose was to put an end to the hasty and usually decisive issuance of injunctions and restraining orders by federal courts which tipped the scales in non-violent labor disputes.

In 1947, Congress enacted §301(a) of Taft-Hartley which authorized federal courts to entertain suits to enforce collective bargaining agreements. *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448 (1957). In so doing, Congress did not repeal the Norris-LaGuardia Act's prohibition of injunctions against strikes in violation of collective bargaining agreements. In fact, Congress considered and rejected a proposal which would have accomplished that precise result.[5] The House of Representatives had originally proposed a bill conferring jurisdiction upon federal courts to enforce collective bargaining agreements and, in addition, specifically repealing in such suits the Norris-LaGuardia ban on injunctions. The portion of the bill conferring jurisdiction sur-

[5] At the same time, Congress did repeal Norris-LaGuardia in limited respects not applicable here. Thus, federal courts were authorized to enjoin certain types of strikes which Taft-Hartley made illegal, *e.g.,* secondary boycotts and national emergency strikes. See, §10(h) of the National Labor Relations Act, 61 Stat. 146, 155, as amended, 29 U.S.C. §160(h); §208(b) of the Taft-Hartley Act, 61 Stat. 144, 29 U.S.C. §178(b).

vived the conference and became §301(a) of the Taft-Hartley Act; the repeal provision was expressly rejected in conference and did not become law. See particularly, the House Conference Report No. 510, on H.R. 3020, 80th Cong., 1st Sess., p. 66, I Legislative History of the Labor-Management Relations Act of 1947 (hereafter Leg. Hist.). As Senator Taft, Chairman of the Senate conferees, explained, "the conferees * * * rejected the repeal of the Norris-LaGuardia Act." 93 Cong. Rec. 6445-6446, II Leg. Hist. 1544.

On the basis of this legislative history of §301(a), both the majority and dissenting opinions in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195 (1962), recognized that the Norris-LaGuardia ban on injunctions against strikes in breach of contract remains in force. The *Sinclair* majority held that the Congressional decision foreclosed injunctions against strikes in any suit brought under §301 of the Act. Three justices, however, drew a more specific lesson from this history. They agreed that the Norris-LaGuardia Act is controlling where the policy of enforcing a contractual no-strike obligation stands alone:

> "[T]here is no general federal anti-strike policy; and although a suit may be brought under §301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail."

Id. at 225. On this basis they joined in the result in *Teamsters* v. *Yellow Transit,* 370 U.S. 711 (1962), argued before *Sinclair* but decided a week after, where the Court unanimously reversed the grant of an injunction against a strike which was in breach of contract, but which was not over an issue that could be resolved by arbitration.

However, the minority in *Sinclair* urged,

> "that rejection of an outright repeal of §4 was wholly

consistent with acceptance of a technique of accommodation which would lead, in some cases, to the granting of injunctions against concerted activity. Accommodation requires only that the anti-injunction policy of Norris-LaGuardia not intrude into areas, not vital to its ends, where injunctive relief is vital to a purpose of §301; it does not require unconditional surrender."

Id. at 225. In their view, injunctions were not

"barred against strikes over grievances which have been routed to arbitration by a contract specifically enforceable against both the union and the employer. Enforced adherence to such arbitration commitments has emerged as a dominant motif in the developing federal law of collective bargaining agreements."

Id. at 224-225. They concluded that a strike in breach of contract may be enjoined where it is "over a grievance which both parties are contractually bound to arbitrate." *Id.*

The views of the *Sinclair* dissenters became those of the Court in *Boys Markets, Inc.* v. *Clerks Union*, 398 U.S. 235 (1970). The *Boys Markets*' Court held "that the dissenting opinion in *Sinclair* states the correct principles concerning the accommodation necessary between the seemingly absolute terms of the Norris-LaGuardia Act and the policy considerations underlying §301(a)." *Id.* at 249. The *Boys Markets*' Court adopted the standards set out in the *Sinclair* dissent *in haec verba:*

"A District Court entertaining an action under §301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance."

Id. at 254.

The policy considerations requiring this accommodation had been elaborated,

"in such cases as *Lincoln Mills,* the *Steelworkers Trilogy,* and *Lucas Flour,* [which emphasized] the importance that Congress has attached generally to the voluntary settlement of labor disputes without resort to self-help and more particularly to arbitration as a means to this end." (*Id.* at 252)

Given the central role of arbitration, *Sinclair* was overruled, because its holding

"undermined the effectiveness of the arbitration technique as a method peacefully to resolve industrial disputes without resort to strikes, lockouts, and similar devices." (*Id.* at 252)

This undermining effect is shown by the facts in *Boys Markets* itself. That case arose when the union struck to force the employer to capitulate to the union's view that the collective agreement in force prohibited the company from assigning non-unit personnel to perform certain bargaining unit work, even though the contract provided that such disputes "shall be settled and resolved" by arbitration. *Id.* at 238-239, n. 3. When a union, which has agreed to arbitrate a contract grievance, strikes to force the employer

to resolve the grievance in its favor, the union is undermining the very purpose of the arbitration provision: to serve as a "substitute for industrial strife" (*Steelworkers* v. *Warrior & Gulf Co.*, 363 U.S. 524, 528). For in that circumstance, if the strike is successful, the grievance will be resolved by economic pressure and not by the reasoned decision of an arbitrator for which the parties had bargained.

I. *BOYS MARKETS* ESTABLISHED TWO ESSENTIAL REQUIREMENTS WHICH MUST BE SATISFIED BEFORE A STRIKE INJUNCTION MAY ISSUE: (1) THE STRIKE IS IN BREACH OF CONTRACT; (2) THE STRIKE IS OVER AN ARBITRABLE GRIEVANCE. NEITHER OF THESE REQUIREMENTS CAN BE MET IN THIS CASE.

To insure that the exercise of the power to enjoin peaceful strikes would not exceed the justification for the intrusion upon interests protected by the Norris-LaGuardia Act, *Boys Markets* establishes two threshold requirements: (1) that the strike *is* in breach of the collective bargaining agreement, and (2) that the strike is "over" an arbitrable grievance. As we show in this section of the brief, neither of these requirements is met here. That is why the lower courts were correct in refusing to enjoin the strike. For, while the Company finds the defect of the Second Circuit's decision to be the "adopt[ion]" of a "literal reading" of *Boys Markets* (Pet. Br. 16, 17-18), the "literal" requirements of *Boys Markets* are the expression of the accommodation between Norris-LaGuardia and §301 reached by this Court.

1. This Court's opinion in *Boys Markets* was grounded on the district court's determination in that case "that the strike was in violation of the contract." 398 U.S., at 240. From the very first sentence, where the issue is presented, and throughout the opinion, the Court's analysis was premised on the district court's determination that the strike in question was in breach of contract. See e.g., 398 U.S., at 237, 243, 245, 251-52, 252-53, 254. The dissenting opinion

in *Sinclair*, which the Court adopted in *Boys Markets*, 398 U.S., at 249, similarly stated that the "principle of accommodation" there enunciated applies to strikes which are "breaches of contract." 370 U.S., at 228. And, in *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 380 (1974), this Court reaffirmed that a strike—even when over an arbitrable grievance—must be found in breach of contract before it can be enjoined under the doctrine of *Boys Markets:*

> "The second question is whether the District Court had authority to enjoin the work stoppage. The answer depends on whether the union was under a contractual duty not to strike."

The fact that the strike in *Boys Markets* was in breach of contract was not merely incidental to the Court's holding; it was a necessary element of the Court's analysis. The *Boys Markets* Court was able to characterize its holding as a "narrow one" which did "not undermine the vitality of the Norris-LaGuardia Act" for the very reason that only injunctions of strikes in breach of contract were contemplated. 398 U.S., at 240, 253-254. Nothing is more clear than that a grant of authority to federal courts to enjoin strikes which may be legal would cut deeply into the protection of that Act.

In contrast to *Boys Markets*, in this case there has been no determination by the lower courts that the strike is in breach of contract. And, in this Court, the Company's prayer for relief (Pet. Br. 22) seeks an injunction pending a determination of that very question by an arbitrator:

> "[T]he judgment of the Court of Appeals for the Second Circuit should be reversed with instructions to direct arbitration of the issue of whether the Unions' conduct violated the terms of the collective bargaining agreement and to enjoin any resumption of the sympathy strike and work stoppage *pending* arbitration." (Emphasis added.)

This prayer for relief reflects a misconception, shared by the Third Circuit, that an injunction pending arbitration of the legality of a strike "does not nullify the union's right to honor a primary picket line, but only suspends the exercise of the right until its existence is established by an arbitrator's decision." *NAPA Pittsburgh, Inc.* v. *Chauffeurs, Local 926,* 502 F.2d 321, 324 (3rd Cir. 1974) (en banc), cert. denied 419 U.S. 1049 (1974).

An important premise of the Norris-LaGuardia Act is the recognition that the *timing* of a strike is critical to its success. The harm done by the improvident grant of a preliminary injunction against a lawful strike cannot be cured by an ultimate determination that the strike is lawful. As Senator Norris said:

> "The harm of an injunction ninety-nine times out of one hundred is done and the injustice completed within a few days after the restraining order is issued. . . .
>
> The only way to correct such an order is to take an appeal. But by the time such an appeal goes to the Supreme Court of the United States in most cases the backbones of the laboring men have been broken. . . . The damage has been done and the evil has occurred." 75 Cong. Rec. 4929 (1932).

See also, 75 Cong. Rec. 4935 (1932) (Remarks of Senator Bratton); 75 Cong. Rec. 5489 (1932) (Remarks of Rep. Celler). And, in their critique of the judicial practice which the Norris-LaGuardia Act was adopted to halt, Frankfurter and Greene stated:

> "The injunction [does] not preserve the so-called status quo. . . . The suspension of activities affects only the strikers; the employer resumes his efforts to defeat the strike. . . . Moreover, the suspension of strike activities, *even temporarily,* may defeat the strike for practical purposes and foreclose its resumption, even if the injunction is later lifted." (*The Labor Injunction,* at p. 201 (1930)) (Emphasis added).

This characteristic of the temporary injunction has been well understood by this Court:

> "The truth is that authorizing the issuance of a temporary injunction, as is frequently true of temporary injunctions in labor disputes, may effectively dispose of petitioner's rights and render entirely illusory his right to review here as well as his right to a hearing before the Labor Board."

Construction Laborers v. *Curry,* 371 U.S. 542, 550 (1963), quoted with approval in *Liner* v. *Jafco, Inc.,* 375 U.S. 301, 308 (1964).

Time is particularly of the essence in a case like the present one where the work stoppage sought to be enjoined is in aid of a concededly lawful strike of other employees for a new agreement. The practical effect of such an injunction is to deny those other employees, who have already committed themselves to the strike, the "mutual aid" protected by Norris-LaGuardia. As one commentator has stated,

> "Refusals to cross picket lines are highly dependent upon timing. Even if the arbitrator ultimately decides that the union has the right to honor the picket line in question, events which occurred while arbitration was going forward could inhibit the effectiveness of any post-arbitration work stoppage. *See* NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, 502 F.2d 321, 329 (3d Cir. 1974) (Hunter, J., dissenting), *petition for cert. filed,* 43 U.S.L.W. 3240 (U.S. Oct. 15, 1974) (No. 74-419); Dunau, *supra* note 26, [55 Va.L. Rev. 427] at 467."

Note, 88 Harv.L.Rev. 463, 467 at n. 29 (1974).

Thus, to grant an injunction pending a determination by the arbitrator as to the validity of the strike is to "under-

mine the vitality of the Norris-LaGuardia Act." Yet, the only alternative would be for the district court to make that determination itself before issuing an injunction. But, such a district court determination disserves the national labor policy favoring the arbitration of contract disputes: "[T]he question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for." *Steelworkers* v. *Enterprise Corp.,* 363 U.S. 593, 599 (1960). For this reason, the Court has "cautioned the lower courts against usurping the functions of the arbitrator." *Boys Markets,* 398 U.S., at 243.[6]

The Company's position, then, leads either to the invasion of the central purpose of §4 of the Norris-LaGuardia Act or to the violation of the very policy favoring arbitration which the Company invokes.

2. The dissenting opinion in *Sinclair,* which was adopted by the Court in *Boys Markets,* 398 U.S. at 249, made clear

[6] It is to be noted that there is no obvious answer to the question whether a sympathy strike such as the one in this case is in breach of contract. The answer (as shown by the cases cited at the end of this note) turns on whether the particular no strike clause at issue constitutes a clear and unmistakable waiver of the right to engage in a sympathy strike. Some agreements expressly include sympathy strikes within the coverage of a union's contractual no strike commitment; at the other extreme, some agreements expressly provide that employees who honor a lawful primary picket line at their place of employment are not engaged in a breach of the no strike clause. The language of the instant no strike clause, as is true of most agreements, fits into neither of the foregoing categories. The no strike clause here does not by its terms expressly cover or exclude a sympathy strike. On contract language similar to that here, whether a no strike clause covers a sympathy strike has been found in other cases to be a very close question, the result often turning on nuances of bargaining history. See, e.g., *Gary Hobart Water Corp.* v. *NLRB,* 511 F.2d 287, 288-289 (7th Cir. 1975), cert. denied 44 U.S.L.W. 3263 (Nov. 3, 1975); *Montana-Dakota Utilities Co.* v. *NLRB,* 455 F.2d 1088, 1098 (8th Cir. 1974); see also, *Hyster Company* v. *Independent Towing & Lifting Mach. Ass'n.,* 519 F.2d 89 (7th Cir. 1975).

that even where a strike is in breach of contract, that alone is not sufficient, consistent with Norris-LaGuardia, to justify enjoining the strike:

> ". . . [T]here is no general federal anti-strike policy; and although a suit may be brought under §301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail."

370 U.S. at 225.

The additional public policy threatened in the *Boys Markets* situation was that favoring arbitration as a "substitute for industrial strife." *Warrior & Gulf, supra,* 363 U.S. at 578, reaffirmed in *Gateway, supra,* 414 U.S., at 378.[7] It was to vindicate that policy that the Court permitted an injunction when a strike is "over" a grievance which the parties are contractually bound to arbitrate.

In its brief, the Company suggests that the distinction is merely semantic between a case where the strike is "over"

[7] The Chamber of Commerce in its *amicus* brief asserts that *Gateway* "implicitly recognized * * * that all coercive economic action during the term of the Agreement is presumptively enjoinable unless an express and clear exception permitting such activity is explicitly included in the collective bargaining agreement" (C. of C. Br. 4). The Chamber misreads *Gateway.* That case extended prior law only in two ways: (1) it held, contrary to the Third Circuit, that the *Steelworkers Trilogy* presumption of arbitrability is applicable to safety disputes; and (2) that *Boys Markets* applies to no strike obligations implied under *Teamsters Union* v. *Lucas Flour,* 369 U.S. 95 (1962), just as to express no strike obligations. This refusal to distinguish between the legal consequences of express and implied obligations accords with well established principles of contract law.

> "Contracts are often spoken of as express or implied. The distinction involves, however, no difference in legal effect, but lies merely in the mode of manifesting assent."

Restatement of Contracts, §5, Comment a. See also Williston, Contracts, §3, pp. 8-9 (3d ed. 1957); 1 Corbin, Contracts §18, pp. 39-42 (1960).

an arbitrable dispute and one where the legality of the strike is itself the only arbitrable dispute: "Although *Boys Markets* literally involves a strike over an arbitrable grievance, the policy reasons favoring the availability of injunctive relief are equally compelling in this case" (Pet. Br. 8). On the contrary, the letter of *Boys Markets* is in precise conformity with its spirit, because the "over a grievance . . ." requirement separates strikes which undermine the arbitration process from those which do not.

When a strike is "over," or caused by, an arbitrable dispute, the strike is necessarily in derogation of the arbitration mechanism. The very purpose of such a strike is to force the employer to concede on an issue which the parties agreed to have resolved by an arbitrator. If the strike is successful, the underlying dispute will be determined by economic force, the method given up in the contract in exchange for arbitration, and the jurisdiction of the arbitrator will be defeated. For example, instead of permitting an arbitrator to decide whether certain work was improperly assigned to non-unit employees, a strike "over" that work assignment is meant to force the employer to capitulate and to reassign the work regardless of the merit of the case, without resort to arbitration.

But, where, as here,[8] there is no other arbitrable dispute, the fact that the legality of a strike may itself constitute an arbitrable issues does not render the strike's continuation a threat to the arbitration process. The union is not attempting to evade its contractual obligation by using economic force to win an arbitrable dispute. The fact that the employees have honored the primary picket line does not undermine the power of an arbitrator to rule that they thereby acted in breach of contract.

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[8] The district court found: " . . . [T]he work stoppage under review is motivated solely by respect for other employees' picket lines and plainly is not aimed at resolving an existing dispute by extra-arbitral means" (P. 8a-9a) (footnote omitted).

In this respect, a strike is like any other arbitrable dispute. The arbitration process has not been understood to require maintenance of the *status quo* pending the arbitrator's decision. To vary the example cited above, where the parties have agreed to arbitrate disputed work assignments, as in *Boys Markets,* the arbitration process is not undermined, even though the employer's assignment occurs prior to submission of the issue to the arbitrator. Neither the work assignment in *Boys Markets* nor the strike here ousts the arbitrator of jurisdiction to determine the merits of the issue that is arbitrable. Thus, this Court did not in *Boys Markets* issue an injunction requiring the Company to cease utilizing non-bargaining unit personnel pending arbitration of the legality of the Company's assignment.

In short, where the strike is not "over" an arbitrable issue,

> ". . . the policy considerations that provide the *raison d'etre* for the *Boys Markets* decision are totally absent. Stated simply . . . the policy that favors the arbitration of labor disputes will in no way be undermined if the injunction requested here is denied."

NAPA Pittsburgh, Inc. v. *Automotive Chauffeurs, supra,* 502 F.2d, at 326 (Hunter and Seitz, J.J., dissenting).

The reasoning by which Judges Hunter and Seitz reached that conclusion has been expressly adopted by the Second Circuit in this case (Pet. 8a), by the Fifth Circuit in *United States Steel Corp.* v. *United Mine Workers,* 519 F.2d 1236, at 1244, 1248 (1975), by Judge Fairchild dissenting in *Inland Steel Co.* v. *United Mine Workers,* 505 F.2d 293, 301 (7th 1974), and by Judge Adams dissenting both in *NAPA Pittsburgh, supra* and *Island Creek Coal Co.* v. *United Mine Workers,* 507 F.2d 650, 654 (3rd Cir. 1975), cert. denied 44 U.S.L.W. 3192 (Oct. 6, 1975). Because we believe that reasoning to be persuasive, we quote it extensively:

> "*Boys Markets* involved a dispute between an employer and union over the right of union employees to

perform certain tasks at the employer's store. This was a dispute that the Union, in its collective bargaining agreement, had agreed to resolve through the presentation of reasoned arguments to a neutral arbitrator, rather than through the use of economic force, i.e., by means of a strike. However, in that case, the union ignored both its no strike pledge and its agreement to arbitrate the issue and struck for the avowed purpose of forcing a favorable resolution to the arbitrable dispute. Thus, the union's actions made it clear that they did not intend to return to work until the Company conceded that the tasks involved had to be performed by union men.

"Clearly this strike had the effect of undermining the rule of law that favors the arbitration of labor disputes, since the strike was an attempt to force a union victory on the very issue that was made arbitrable not through the presentation of reasoned arguments to a neutral arbitrator, but rather through the use of sheer economic force. If the tactic had been successful, it would have settled the arbitrable dispute, making arbitration superfluous and thereby defeating the arbitrator's jurisdiction. Thus, the strike represented a plain attempt by the union to undermine and avoid its agreement to arbitrate the issue in dispute and the legal policy that favors the arbitration of labor disputes cut clearly in favor of having the district court issue an injunction to end the work stoppage.

* * * *

"In the present case, no similar situation exists. It is true that here, as in *Boys Markets,* there is a dispute that is clearly arbitrable—that is, the dispute over the nature of the Local 110 picket line and hence the legality of the Local 926 work stoppage. However, in this case, unlike *Boys Markets, the union's work stoppage is not designed to force settlement of this arbitrable issue be-*

fore arbitration can take place; it is not an attempt to defeat the arbitrator's jurisdiction.

". . . Local 926 engaged in its work stoppage only because of the presence of Local 110's picket line. The work stoppage was not begun, nor was it continued, because of the union's disagreement with the Company over the arbitrable issue; that is, over its right to engage in a work stoppage. As a result, no concession that the Company could have made on this issue would have helped to end the walkout. That goal could be attained by the Company only if it resolved its dispute with Local 110 and thus caused that union to remove its picket line.

* * * *

"As a result, while in *Boys Markets* the strike deterred the employer from pursuing arbitration, thus making it necessary to enjoin the strike in order to promote the policy favoring arbitration, no similar situation exists here. In this case, since the work stoppage does not pressure the Company to forego arbitration, the issuance of a *Boys Markets* injunction will do nothing to promote the arbitration of labor disputes and its issuance cannot be supported by the policy considerations that underlie *Boys Markets.*

* * * *

"As we stated at the outset, our disagreement with the majority boils down to a dispute as to the meaning of *Boys Markets.* In our opinion, the holding in that case permits the issuance of injunctions to end work stoppages only when an arbitrable dispute is an underlying cause of the strike.

"We reach this conclusion, in part, because of the language used to state the holding in that case. However, we are primarily persuaded by our understanding of the policy considerations that underlie that decision.

In *Boys Markets* the court was faced with a dilemma. On the one hand, it was obliged to give effect to the policy judgment that is embodied in the anti-injunction provisions of the Norris-LaGuardia Act by refusing to issue an injunction. On the other, it was equally obliged to enjoin the strike since its clear effect was to undercut the policy that favors the promotion of arbitration of labor disputes. Under these special circumstances, it ruled that an injunction could issue.

> "It is important to note that the Court's goal was not to end the strike. Instead, its sole purpose was to promote the arbitration of the labor dispute involved by eliminating a serious impediment to that goal. Thus, its rule sensibly permits the enjoining of strikes only when they have the effect of interfering with agreed upon arbitration. As we have noted, a strike can have this effect only when it is caused by the dispute that is supposed to be arbitrated, since only under those circumstances will the strike pressure the employer to capitulate on the arbitrable dispute and therfore forego its arbitration."

502 F.2d, at 325, 326-327, 333 (emphasis in original; footnotes omitted). See also, 88 Harv. L. Rev., *supra,* at 466; Comment, *Boys Markets Developments In The Third Circuit,* 48 Temple L.Q. 281, 308-309 (1975); Note, 71 Colum. L. Rev. 336, 342-344 (1971).

II. ISSUANCE OF THE INJUNCTION SOUGHT HERE WOULD REQUIRE JUDICIAL REPEAL OF NORRIS-LAGUARDIA AND REVERSAL OF THE PRINCIPLES OF NATIONAL LABOR POLICY EXPRESSED IN *BOYS MARKETS.*

A. As we have shown, the injunction sought here does not meet the requirements nor fall within the rationale of *Boys Markets.* Petitioner makes fleeting suggestion, expanded upon by at least two of the *amici curiae,* that this Court should go beyond *Boys Markets* and grant federal courts the

power to enjoin any strike in breach of contract, regardless of whether such an injunction would further the arbitration process. See, Brief of the National Association of Manufacturers (hereinafter "NAM Br.") 3; Brief of Chamber of Commerce of the United States 3-4. The NAM denies that this result would require

> "reversing the rule stated in *Boys Markets.* . . . Rather the Court merely will be continuing the process of accommodating Section 4 of the Norris-LaGuardia Act to Section 301(a) of the Labor Management Relations Act ('LMRA') in light of the realities of modern labor-management relations."

NAM Br. 4. On the contrary, acceptance of that argument would constitute a reversal, not an extension, of *Boys Markets.*

As discussed above, pp. 8-9, Congress in enacting §301(a) expressly rejected a proposal which would have repealed the Norris-LaGuardia Act's prohibition of injunctions against strikes in violation of collective bargaining agreements.[9] The *Sinclair* dissent recognized the force of this Congressional determination and concluded that Norris-LaGuardia does not permit a strike injunction to issue solely on the basis that the strike is in breach of contract:

> " . . . [T]here is no general federal anti-strike policy; and although a suit may be brought under §301 against strikes which, while they are breaches of private con-

[9] The NAM in its Brief at 6 misrepresents that certain remarks—relating to the availability of equitable relief—made by Congressmen Barden concerning §302(e) of the House Bill are equally applicable to §301(a). To support that conclusion, the NAM states that §302 of the House Bill was "identical in all major respects to Section 301(a)." *Id.* In fact, the proposed §302(e) would have made Norris-LaGuardia inapplicable to suits for breach of contract. However, this portion of the House Bill was rejected in conference (see pp. 8-9, *supra*). Indeed, it was by eliminating §302(e) of the House Bill that Congress made clear that Norris-LaGuardia would not be repealed in suits under §301.

tracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail. Insistence upon strict application of Norris-LaGuardia to a strike over a dispute which both parties are bound by contract to arbitrate threatens a leading policy of our labor relations law. But there may be no such threat if the union has made no binding agreement to arbitrate; and if the employer cannot be compelled to arbitrate, restraining the strike would cut deep into the core of Norris-LaGuardia. . . . Accommodation requires only that the anti-injunction policy of Norris-LaGuardia not intrude into areas not vital to its ends, where injunctive relief is vital to a purpose of §301; it does not require unconditional surrender."

370 U.S. at 225.

Just one week after *Sinclair,* a unanimous Court, including the *Sinclair* dissenters, held that a strike in breach of contract could not be enjoined in a case where the parties were not bound to arbitrate any dispute. *Teamsters* v. *Yellow Transit,* 370 U.S. 711 (1962) (more complete recitation of facts at 282 F.2d 345). *Cf.* NAM Br. 3. And, of course, the *Sinclair* dissent was subsequently adopted by the Court in *Boys Markets.*

Thus the *amici* mentioned above seek to have this Court repeal Norris-LaGuardia in suits for specific enforcement of no-strike provisions of collective bargaining agreements. In the words of the NAM brief,

> 'This Court should permit an employer to specifically enforce the no-strike provision in its contract with a union where the work stoppage is the result of the employees' refusal to cross a picket line set up at their employer's premises. The relief of specific performance must be obtainable even though the court makes the threshold determination that the situation does not present an issue arbitrable under the contract's arbitration provision."

NAM Br. 3. That position, as explained, represents a complete rejection of the will of Congress and the accommodation reached by this Court in *Boys Markets.* The statement of Judge Stevens in *Associated General Contr. of Ill.* v. *Illinois Conf. of Teamsters,* 454 F.2d 1324, 1328 (7th Cir. 1972) is appropriate here:

> "*Boys Markets* represents a principled accommodation between §301 of the Labor-Management Relations Act of 1947 and the 'core purpose' of Norris-LaGuardia; the decision rests on a reasoned exposition of the national labor policy. It does not support plaintiff's request for a case-by-case encroachment on the scope of Norris-LaGuardia's prohibition against labor injunctions."

B. Congress this past year expressly endorsed the "accommodation" made in *Boys Markets* between Norris-LaGuardia's prohibition of the strike injunction and the policy favoring arbitration fostered by §301(a).

On July 25, 1975, the House of Representatives passed H.R. 5900, a bill the major purpose of which was to overrule *Labor Board* v. *Denver Building Trades Council,* 341 U.S. 675 (1951), by amending §8(b)(4) of the Labor-Management Relations Act, 29 U.S.C. §158(b)(4) so as to provide that:

> Where there is a labor dispute with the general contractor or one subcontractor, lawful economic presure may be applied to halting the day-to-day operations of the general and all the subcontractors.

On October 29, 1975, the Senate Committee on Labor and Public Welfare reported out S. 1479, a companion bill designed to achieve the same purpose. S. 1479, as reported, differed from H.R. 5900, as passed by the House, in that, *inter alia,* the Senate bill but not the House bill proposed to amend the NLRA by adding a new §8(i) providing:

> "(i) Notwithstanding the provisions of this or any

other Act, any employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor-Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final settlement of disputes as provided in the agreement."

The plain meaning of §8(i) is that only where a strike in breach of contract "relat[es] to an issue which is subject to final and binding arbitration . . ." should federal courts be permitted to issue an injunction. The authoritative explanation of §8(i) in the Senate and Conference Reports confirms this plain meaning.

S. Rep. No. 94-438, 94th Cong. 1st Sess., p. 5 explained that:

(2) An amendment was offered by Senator Taft adding a new sub-section (i) to section 8 of the Taft-Hartley amendments to permit the Federal courts to grant injunctive relief where picketing is instituted at a common situs in breach of a "no-strike" clause of a collective bargaining agreement. This amendment would have the effect of codifying, in the industry covered by the bill, the Supreme Court's decision in *The Boys Markets, Inc.* v. *Retails Clerks Union,* 398 U.S. 235 (1970), insofar as it authorizes the District Courts to grant injunctions for strikes (or lockouts) over a grievance which both parties are contractually bound to arbitrate notwithstanding § 4 of the Norris-LaGuardia Act, as well as the limitations and preconditions on the granting of such injunctions declared in *Boys Markets.* This amendment was adopted by unanimous vote.

The Senate Report at p. 29 amplified the function of §8(i) by stating:

The purpose of this provision is to codify with respect to strikes and picketing at a common situs the accommodation established in *The Boys Markets, Inc.* v. *Retails Clerks Union,* 398 U.S. 235 (1970) between the Norris-LaGuardia Act, 29 U.S.C. 101, *et seq.* and sections 203(d) and 301 of the Labor-Management Relations Act (29 U.S.C. 141, *et seq.*). Here again, the placement of this section should not be construed to create a new unfair labor practice.

Thus where the parties to a collective bargaining agreement have provided for a method of "final adjustment" for the settlement of grievance disputes arising thereunder as to the application or interpretation of an existing collective bargaining agreement (See section 203(d)), the Courts may, notwithstanding the provisions of section 4 of the Norris-LaGuardia Act, in a suit under section 301 issue an injunction enjoining a work stoppage at a common situs. Such injunctive relief is available only where the stoppage is ["]over a grievance["] which "both parties are contractually bound to arbitrate" and provided also that the other conditions declared in *Boys Markets* are satisfied, and provided further that the procedural and equitable requirements of the Norris-LaGuardia Act are satisfied. See *Boys Markets,* 398 U.S. at 253-254 and *Emery Air Freight Corporation* v. *Local Union 295,* 449 F.2d, 586, 588-589 (2d Cir. 1971).

On the Senate floor S. 1479 was extensively debated and revised, and was eventually passed, designated as H.R. 5900 as amended. As in Committee, no opposition was voiced to this legislative codification of *Boys Markets'* accommodation of Norris-LaGuardia and §§301(a) and 203(d), and the bill as passed by the Senate included the proposed §8(i).

In conference the House accepted the inclusion of § 8(i) in H.R. 5900. See S.Conf.Rep. No 94-518, 94th Cong., 1st Sess., p. 3. The Joint Explanatory Statement of the Committee of Conference declared:

Injunctions

The Senate amendment adds a new section 8(i) which provides that "Notwithstanding the provisions of this or any other Act, any employer at a common construction site may bring an action for injunctive relief under section 301 of the Labor Management Relations Act (29 U.S.C. 141) to enjoin any strike or picketing at a common situs in breach of a no-strike clause of a collective-bargaining agreement relating to an issue which is subject to final and binding arbitration or other method of final setlement of disputes as provided in the agreement." The House bill contains no comparable provision. The House recedes. (*Id.* at p. 16.)

The Conference Report was accepted by both the House and the Senate. Again, none of the opponents of the bill spoke against the proposed § 8(i).

On December 22, 1975, President Ford announced his intention to veto H.R. 5900 (11 Weekly Compilations of Presidential Documents 1393). The crux of his veto message was:

> "I have concluded that neither the building industry nor the nation can take the risk that those who claim the bill, which proposes a permanent change in the law, will lead to loss of jobs and work hours for the construction trades, higher costs for the public, and further slowdown in a basic industry are right."
>
> * * * *
>
> "This is not the time for altering our national labor-management relations law if the experiment could lead to more chaotic conditions and a changed balance of power in the collective bargaining process."

On January 2, 1976, the President vetoed that bill (12 Weekly Compilations of Presidential Documents 16-17).

There was no criticism, express or implied, of the proposed § 8(i). Indeed, the President's stress on maintaining

the *status quo ante* as to matters which would change the parties' comparative bargaining power is in line with the purpose of § 8(i)—to codify the rule of *Boys Markets.*

Had H.R. 5900 become law, § 8(i), given the circumstances surrounding its adoption, would have amounted to Congressional affirmation of the *Boys Markets* limitations upon the power to grant strike injunctions under §301. See *United States* v. *Freeman,* 3 How. 564-565 (1845) where the Court declared:

> "[I]f it can be gathered from a subsequent statute in pari materia, what meaning the Legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute";

see also *Stockdale* v. *Atlantic Ins. Co.,* 20 Wall. 323, 332 (1874); cf. *Red Lion Broadcasting Co.* v. *F.C.C.,* 395 U.S. 367, 383 (1969); *Michigan Nat. Bank* v. *Michigan,* 365 U.S. 467, 481 (1961).

We submit that, despite the veto, the Congressional action constitutes "persuasive circumstances evidencing a clear design that congressional [failure to amend § 301 of Taft-Hartley or § 4 of Norris-LaGuardia] be taken as acceptance of [*Boys Markets*]." Cf. *Boys Markets,* 398 U.S., at 242. Here, the Court is confronted with the necessity for accommodating two statutes passed by two earlier Congresses which statutes appear in some respects to collide in their underlying policy presuppositions. To defer to the declared consensus of a later legislature regarding the proper accommodation is but to give due weight to the "truism that it is the business of Congress to declare policy and not this Court's".[10] *Carpenters Union* v. *Labor Board,* 357 U.S. 93, 100 (1958).

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[10] We are not suggesting that the 1975 Congress had any special insight into the intentions of the Congress that enacted either Norris-LaGuardia or Taft-Hartley which is entitled to judicial respect. *Com-*

CONCLUSION

For all the foregoing reasons, the decision of the Court below should be affirmed.

Respectfully Submitted,

J. ALBERT WOLL
ROBERT C. MAYER
736 Bowen Building
815 Fifteenth Street, N.W.
Washington, D. C. 20005
LAURENCE S. GOLD
815 Sixteenth Street, N.W.
Washington, D. C. 20006
Attorneys for AFL-CIO

GEORGE H. COHEN
ELLIOT BREDHOFF
MICHAEL H. GOTTESMAN
ROBERT M. WEINBERG
Bredhoff, Cushman, Gottesman & Cohen
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036
BERNARD KLEIMAN
CARL FRANKEL
RUDY L. MILASICH, JR.
Five Gateway Center
Pittsburgh, Pennsylvania 15222
THOMAS P. McMAHON
1028 Liberty Bank Building
Buffalo, New York 14202
Attorneys for USWA

---

pare, e.g., United States v. *Price,* 361 U.S. 304, 312 (1960); *United States* v. *United Mine Workers,* 330 U.S. 258, 282 (1947); *Waterman S.S. Corp.* v. *United States,* 381 U.S. 252, 269 (1965). Rather, we note simply that the accommodation reached in *Boys Markets* between Norris-LaGuardia and §301(a) has been applicable since 1970. In the interim period, Congress has evinced no intent to overrule that accommodation. On the contrary, the only manifestation of Congressional intent is to endorse *Boys Markets* as the proper statement of existing law.

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-339

SUPREME COURT, U. S.
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BUFFALO FORGE COMPANY, *Petitioner*,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I. W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;
LOCAL UNION No. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;
LOCAL UNION No. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO; *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

MOTION BY RESPONDENT UNITED STEELWORKERS OF AMERICA, AFL-CIO, AND AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AS AMICUS CURIAE FOR LEAVE TO FILE JOINT BRIEF

J. ALBERT WOLL
ROBERT C. MAYER
736 Bowen Building
815 Fifteenth Street, N.W.
Washington, D. C. 20005
LAURENCE S. GOLD
815 Sixteenth Street, N.W.
Washington, D. C. 20006
Attorneys for AFL-CIO

GEORGE H. COHEN
ELLIOT BREDHOFF
MICHAEL H. GOTTESMAN
ROBERT M. WEINBERG
Bredhoff, Cushman, Gottesman & Cohen
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036
BERNARD KLEIMAN
CARL FRANKEL
RUDY L. MILASICH, JR.
Five Gateway Center
Pittsburgh, Pennsylvania 15222
THOMAS P. McMAHON
1028 Liberty Bank Building
Buffalo, New York 14202
Attorneys for USWA

IN THE

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October Term, 1975

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BUFFALO FORGE COMPANY,

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v.

UNITED STEELWORKERS OF AMERICA, ET AL.,

Respondents.

MOTION FOR LEAVE TO FILE JOINT BRIEF

Respondent United Steelworkers of America, AFL-CIO (hereinafter referred to as "USWA" or "the Union") and the American Federation of Labor and Congress of Industrial Organizations (hereinafter referred to a. 'AFL-CIO") hereby move to file a joint brief and in support thereof show as follows:

AFL-CIO is a federation of 111 labor organizations, with a combined membership of 14 million. AFL-CIO is and for many years has been vitally concerned with the subject matter of this instant proceeding—namely, the relationship between the Norris-LaGuardia Act's prohibition on the issuance by federal courts of injunctions against strikes and the federal labor policy favoring arbitration which derives from §301(a) of the Labor-Management Relations Act.*

* Illustrative of its continuing interest in the development of the law with respect to the important issue under consideration here, AFL-CIO has filed *amicus* briefs in *Sinclair* v. *Atkinson,* 370 U.S. 195 (1962); and *Boys Markets* v. *Clerks Union,* 398 U.S. 235 (1970).

For that reason AFL-CIO has requested and obtained written consent from the parties to file an *amicus curiae* brief here.

USWA is the largest affiliate within the AFL-CIO. It is also the collective bargaining representative of the employees of the petitioner Buffalo Forge Company.

In the course of preparing their respective briefs, discussions between counsel for the AFL-CIO and USWA disclosed that both organizations would present a common position. Accordingly, AFL-CIO and USWA believed that their position could be most succinctly presented in one brief.

WHEREFORE, AFL-CIO and USWA jointly request that they be granted leave to file a single brief in this case.

Respectfully submitted,

J. Albert Woll
Robert C. Mayer
736 Bowen Building
815 Fifteenth Street, N.W.
Washington, D. C. 20005
Laurence S. Gold
815 Sixteenth Street, N.W.
Washington, D. C. 20006
Attorneys for AFL-CIO

George H. Cohen
Elliot Bredhoff
Michael H. Gottesman
Robert M. Weinberg
Bredhoff, Cushman, Gottesman & Cohen
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036
Bernard Kleiman
Carl Frankel
Rudy L. Milasich, Jr.
Five Gateway Center
Pittsburgh, Pennsylvania 15222
Thomas P. McMahon
1028 Liberty Bank Building
Buffalo, New York 14202
Attorneys for USWA

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LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; VALENTINE F. ZIZZI, IND. AND AS PRESIDENT; VALENTINE OLEJNICZAK, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 1874 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO; KERMIT HASELEY, IND. AND AS PRESIDENT; AND ALFRED LIGAMMARI, IND. AND AS VICE PRESIDENT OF LOCAL UNION NO. 3732 OF THE UNITED STEELWORKERS OF AMERICA, AFL-CIO;

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR THE PETITIONER

JEREMY V. COHEN,
Attorney for Petitioner,
1016 Liberty Bank Building,
Buffalo, New York 14202.

FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
of Counsel.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-343-0457

INDEX.

Page

Argument:

I. Respondents have misstated the basic criteria which justify issuance of the injunction order ... 2

II. When a union waives its right to strike, the effect of a preliminary injunction on the strike's success is irrelevant 4

Conclusion 6

AUTHORITIES CITED.

Cases:

Association of General Contractors of Illinois v. Illinois Conference of Teamsters, 454 F. 2d 1324 (7th Cir. 1972) 4

Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. 235 (1970) 2,3,4

Drake Bakerys, Inc. v. Local 50, American Bakery & Confectionary Workers, 370 U.S. 254 (1962) 3

Gateway Coal Co. v. United Mine Workers, 414 U.S. 368 (1974) 2,3

Graphic Arts Local 254 v. Western Publishing Co., 522 F. 2d 530 (7th Cir. 1975) 2

Shop-Rite Foods, Inc., 58 L.A. 965 (1972) 5

Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) 3,4

Teamsters v. Yellow Transit System, 370 U.S. 711 (1962) 3

Valmac Industries, Inc. v. Food Handlers Local 425, 519 F. 2d 263 (8th Cir. 1975) Petition for Cert. filed U.S. October 31, 1975, No. 75-647 5

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LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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REPLY BRIEF FOR THE PETITIONER

I. Respondents have misstated the basic criteria which justify issuance of the injunction order.

Respondents are convinced, erroneously, that this Court's opinion in *Boys Markets*[1] sets forth a "threshold" requirement that "the strike *is* in breach of contract" (Brief, pp. 12-13). The references to various excerpts in the opinion fail to support that conclusion (Brief, p. 12). That strike violated the contractual duty to arbitrate, because the Union struck without resorting to arbitration of the arbitrable employee grievances concerning work assignments. See: *Graphic Arts Local 254 v. Western Publishing Co.*, 522 F. 2d 530 (7th Cir. 1975); cert. denied .... U.S. ...., 91 LRRM 2195.

In *Graphic Arts, supra,* union members refused to handle certain allegedly "struck work" products without first determining, via the contractual arbitration procedure, whether that refusal was within the purview of the "struck work" exception to an express no-strike clause. The 7th Circuit Court of Appeals found the union "had breached" the agreement by engaging in a work stoppage without first exercising its contractual right to arbitration. The Court held that the union would be liable for damages if, on remand, the District Court determined that the work was not "struck work". The Court did not merely determine that prerequisites for a *Boys Markets* injunction had been met; a breach was found because the Union struck without first obtaining arbitral confirmation of its right to strike.

A union's contractual commitment to the arbitration procedure would be hollow at best if it or its members could simply ascertain their own rights under the agreement rather than seek an arbitrator's determination, when an arbitrable dispute exists relating to the exercise of that right. *Gateway*

[1] 398 U.S. 235 (1970)

Coal Co. v. United Mine Workers, 414 U.S. 368, 385-386 (1974).

Respondents urge that the Court must determine that a breach of contract has occurred, but they complain that that determination is contractually reserved for the arbitrator (Brief, pp. 15-16). We had thought that *Boys Markets* disposed of that argument (See also: *Drake Bakerys, Inc. v. Local 50, American Bakery & Confectionary Workers,* 370 U.S. 254 (1962)). The critical requirement satisfied in the instant case is that the parties conferred jurisdiction on the arbitrator to resolve that dispute[2].

Petitioner contends the federal courts properly have jurisdiction to order arbitration and to enjoin a sympathy strike or other work stoppage which was not triggered by an employee or union grievance, when:

(1) The dispute between the contracting parties concerns the application and interpretation of the labor agreement; and

(2) The labor agreement mandates that the dispute is subject to final and binding resolution by arbitration; and

(3) The labor agreement contains a no strike obligation, express or implied.

Yellow Transit, supra, does not stand for the proposition that an injunction will not be granted unless the strike is "over" a grievance (Brief, p.9). The majority delivered a one work reversal opinion on the authority of *Sinclair*[3]. The Con-

[2] "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. *We deal only with the situation in which a collective barganing contract contains a mandatory grievance adjustment or arbitration procedure....*". [Emphasis added] *Boys Markets, supra,* at 253. See also *Teamsters v. Yellow Transit System,* 370 U.S. 711 (1962), Concurring Opinion, Brennan, J.

[3] 370 U.S. 195 (1962)

curring Opinion (Brennan, J.) adopted the result solely on the ground the collective bargaining contract did not bind either party to arbitrate *any* dispute. The emphasis of those *Sinclair* dissenters on the absence of any binding arbitration procedure is crucial because an injunction could not have been in aid of any arbitration mechanism.

Association of General Contractors of Illinois v. Illinois Conference of Teamsters, 454 F.2d 1324 (7th Cir. 1972) is cited by Respondents in support of a contention that a sympathy strike injunction will emasculate, if not "repeal" Norris LaGuardia (Brief, p.25).

In that case, employers obtained an injunction order from a District Court which expressly granted the order to preserve the Court's—not an arbitrator's—jurisdiction to resolve the underlying dispute. It is undisputed that this rational is one of the main reasons for passage of Norris LaGuardia.

The 7th Circuit (Stevens, J.) correctly observed that the "*quid pro quo* which substitutes arbitration—not litigation—for economic warfare is not part of this contract" (454 F.2d at 1329-30). "The union had not agreed to compulsory arbitration. On the contrary, it had expressly reserved the right to 'economic recourse' in the event of a deadlock" (454 F.2d at 1329)[4].

II. When a union waives its right to strike, the effect of a preliminary injunction on the strike's success is irrelevant.

Respondents also contend that to grant injunctive relief to an employer pending arbitration of the scope of the right to strike, eliminates the protection of Norris-LaGuardia (Brief,

[4] At footnote 13 (454 F.2d. at 1330), the Court observed: "a provision for binding arbitration which is not present in this case was of critical importance in the cited cases" (citing *Boys Markets, et al.*).

pp. 15-16). Suspension of the sympathy strike causes irreparable harm because, Respondents urge, "the timing of a strike is critical to its success" (Brief, p. 14).

Respondents are preoccupied more with the effectiveness of the strike weapon than with considerations of whether its use can be squared with the no-strike clause to which the Union and its members voluntarily agreed to be bound. Since an injunction order, whether providently or improvidently granted, will in any event have the same effect, the critical issue is whether the order is justified by federal pro-arbitration policies.

Senator Norris' quoted remarks do not support Respondents' claims of potential irreparable harm (Brief, p.14). As Petitioner has previously urged in its main brief (p.21), prompt resort to arbitration, fashioned by the District Court's decree, will obviate protracted litigation and delay, if the arbitrator decides the Union was contractually free to strike (*Valmac Industries, Inc.*, 519 F.2d. 263 (8th Cir.1975); petition for cert. filed U.S. October 31, 1975, No. 75-647). The essence of Respondent's untenable position is that a union enjoys a higher status in striking in advancement of another union's cause than in striking in advancement of a direct cause of its own. *Shop-Rite Foods, Inc.*, 58 L.A. 965 (1972).

Conclusion.

For the reasons stated, it is respectfully urged that the judgment of the Court of Appeals for the Second Circuit should be reversed with instructions to direct arbitration of the issue of whether the Unions' conduct violated the terms of the collective bargaining agreement and to enjoin any resumption of the sympathy strike and work stoppage pending arbitration.

Respectfully submitted,

JEREMY V. COHEN,
FLAHERTY, COHEN, GRANDE
& RANDAZZO, P.C.,
1016 Liberty Bank Building,
Buffalo, New York 14202,
Attorney for Petitioner.

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OCTOBER TERM, 1975

No. 75-339

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LOCAL UNION NO. 3732, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES OF AMERICA, *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

NATIONAL ASSOCIATION OF MANUFACTURERS
OF THE UNITED STATES OF AMERICA

By RICHARD D. GODOWN
General Counsel

LESLIE CARTER SILVER
Assistant General Counsel
1776 F Street, N.W.
Washington, D.C. 20006

ARTISAN TYPE, INC. WASHINGTON, D.C.

INDEX

	Page
INTEREST OF THE *Amicus Curiae*	1
PURPOSE OF BRIEF	2
ARGUMENT	3
CONCLUSION	10

AUTHORITIES CITED

CASES:

Armco Steel Corp. v. *UMW*, 505 F.2d 1129 (4th Cir. 1974)	2
Boys Markets, Inc. v. *Retail Clerks Union*, 398 U.S. 235 (1970)	4, 7, 8
Buffalo Forge Company v. *United Steelworkers of America, AFL-CIO, et al.*, 517 F.2d 1207 (2nd Cir. 1975)	3
Dowd Box Co. v. *Courtney*, 368 U.S. 502 (1962)	6
Inland Steel Company v. *Local Union No. 1545, United Mine Workers of America*, 505 F.2d 293 (7th Cir. 1974)	2
Island Creek Coal Co. v. *UMWA*, 507 F.2d 650 (3rd Cir. 1975)	2
Mastro Plastics Corp. v. *N.L.R.B.*, 350 U.S. 270 (1956)	10
Monongahela Power Co. v. *Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC*, 484 F.2d 1209 (4th Cir. 1973)	2
NAPA Pittsburgh, Inc. v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926*, 502 F.2d 321 (3rd Cir. 1974) (*en banc*), *cert. denied*, 419 U.S. 1049 (1974)	2
Pilot Freight Carriers, Inc. v. *Local 391 Teamsters*, 497 F.2d 311 (4th Cir. 1974), *cert. denied*, 419 U.S. 869 (1974)	2
Teamsters Local 174 v. *Lucas Flour Co.*, 369 U.S. 95 (1962)	7
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 (1957)	6, 7, 8
United Electrical Workers v. *N.L.R.B.*, 223 F.2d 338 (D.C. Cir. 1955), *cert. denied*, 350 U.S. 981 (1956)	5
Valmac Industries, Inc. v. *Food Handlers Local 425*, 519 F.2d 263 (8th Cir. 1975)	2

STATUTES:

29 U.S.C. §104	
29 U.S.C. §185(a)	

SECONDARY MATERIALS:

R. Pound, *The Spirit of the Common Law* (1921)	4
S. Rep. No. 80-105, 80th Cong., 1st Sess. (1947)	5, 9
Wellington, *The No-Strike Clause and the Labor Injunction: Time for a Re-Examination*, 30 U. PITT. L. REV. 293 (1968)	5

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BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS OF THE UNITED STATES OF AMERICA, *AMICUS CURIAE*, IN SUPPORT OF PETITIONER

With consent of the parties, the National Association of Manufacturers of the United States of America respectfully submits this brief as *amicus curiae* in support of the Petitioner.

INTEREST OF *AMICUS CURIAE*

The National Association of Manufacturers ("NAM") is a non-profit, voluntary business association, organized as a membership corporation under the laws of the State of New York. Its members comprise manufacturing and

related concerns of all sizes located throughout the United States. The NAM, therefore, represents a substantial number of the nation's industrial employers.

Many of its members are signatories to collective bargaining agreements containing no-strike clauses. The usefulness of these clauses with respect to insuring continuous plant operations will be significantly diminished if the employer cannot have the no-strike clause specifically enforced in the sympathy strike situation. Accordingly, the NAM has a proper interest in the resolution of the issues before the Court in this case.

PURPOSE OF BRIEF

The NAM does not intend to reiterate the arguments presented in Petitioner's Brief in support of its petition for writ of certiorari and Brief to the court below that the requested injunction does not conflict with Section 4 of the Norris-La Guardia Act and the work stoppage did involve an arbitrable dispute. While we agree with these arguments and the Third, Fourth, Seventh, and Eighth Circuits' decisions,[1] the purpose of this Brief is to show that reversal of the court below is equally appropriate on the ground that to grant the specific enforcement of the no-strike clause in the situation presented to this Court, is but to continue the reconciliation process with respect to the Norris-La Guardia

[1] *NAPA Pittsburgh, Inc.* v. *Automotive Chauffeurs, Parts and Garage Employees, Local Union No. 926*, 502 F.2d 321 (3d Cir. 1974) (*en banc*), *cert. denied*, 419 U.S. 1049 (1974); *Island Creek Coal Co.* v. *UMWA*, 507 F.2d 650 (3d Cir. 1975); *Monongahela Power Co.* v. *Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO-CLC*, 484 F.2d 1209 (4th Cir. 1973); *Pilot Freight Carriers Inc.* v. *Local 391 Teamsters*, 497 F.2d 311 (4th Cir. 1974), *cert. denied* 419 U.S. 869 (1974); *Armco Steel Corp.* v. *UMW*, 505 F.2d 1129 (4th Cir. 1974); *Inland Steel Company* v. *Local Union No. 1545, United Mine Workers of America*, 505 F.2d 293 (7th Cir. 1974); and *Valmac Industries, Inc.* v. *Food Handlers Local 425*, 519 F.2d 263 (8th Cir. 1975).

Act's anti-injunction provision and Section 301(a) of the Labor Management Relations Act.

ARGUMENT

This case presents the question of whether an unqualified no-strike clause can be specifically enforced in the situation involving a sympathy strike. The court below stated that the work stoppage could not be enjoined because

> [t]he strike at issue in the instant case is not over a[n arbitrable] grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

Buffalo Forge Company v. *United Steelworkers of America, AFL-CIO, et al.*, 517 F.2d 1207, 1210 (2nd Cir. 1975). We believe that this position is untenable.

This Court should permit an employer to specifically enforce the no-strike provision in its contract with a union where the work stoppage is the result of the employees' refusal to cross a picket line set up at their employer's premises. The relief of specific performance must be obtainable even though the court makes the threshold determination that the situation does not present an issue arbitrable under the contract's arbitration provision.

Unless the equitable relief of specific performance is granted a clearly absurd situation results. The employer who is faithfully performing all of his contract obligations cannot have the court compel his employees and their union to honor the principal contractual promise they have made, *i.e.* that they will not strike. On the other hand, the employer who has allegedly broken his promise can maintain his operations by securing the specific performance of a no-strike clause when the strike is caused by the alleged breach because the issue of the employer's breach is one for resolution by the arbitrator. Furthermore, by allowing specific performance, this Court will promote the federal

labor law policy of achieving industrial peace. It will not be reversing the rule stated in *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970). Rather the Court merely will be continuing the process of accommodating Section 4 of the Norris-La Guardia Act to Section 301(a) of the Labor Management Relations Act ("LMRA") in light of the realities of modern labor-management relations.

The Norris-La Guardia Act was enacted to remedy a particular situation of which Congress disapproved—the wholesale issuance of injunctions against strikes without regard to the merits of the situations involved. During the forty years prior to the adoption of that act's anti-injunction provision, the federal judiciary decided labor relations issues not on the basis of a coherent and equitable body of labor law but on the basis of its personal predilections. Most of the federal judges maintained a judicial philosophy that required "uncompromising insistence upon individual interests and individual property" rights. R. Pound, *The Spirit of the Common Law* 37 (1921). A judge could freely apply his philosophy to the issue before him since at that time there were few collective bargaining agreements; neither the law nor the parties to the suit set forth the obligations of the employer and the employees. Consequently injunctions were issued freely for the benefit of the employer against strikes by employees and their new mutual aid organizations irrespective of the inherent propriety of the employees' actions. The anti-injunction provision established the statutory basis for controlling these judicial excesses and correcting the imbalance in favor of the employer that the courts had created.

Ultimately, however, the results of the anti-injunction statute became apparent; an imbalance with respect to the enforcement of rights and duties existed in favor of the unions. Unions could and did refuse to honor their contractual obligations. They were able to violate their collective bargaining agreements with impunity because of the Norris-La Guardia Act's anti-injunction provision. Congress, therefore, enacted legislation, *viz.*, Section 301(a) of the LMRA, designed to remedy this undesirable imbalance;[2] unions could be sued for breaches of their contractual obligations. Wellington, *The No-Strike Clause and the Labor Injunction: Time for a Re-Examination,* 30 U. PITT. L. REV. 293, 294 (1968).

Furthermore, Section 301(a) was enacted because Congress believed that making the collective bargaining agreement binding and enforceable upon both parties would

> promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.

S. Rep. No. 80-105, 80th Cong., 1st Sess. 17 (1947). In its attempt to create a climate that would foster industrial peace, Congress sought to promote the inclusion of no-strike clauses in collective agreements. The Senate Report states that a union "should have no reluctance in including a no-strike clause if it intends to live up to the terms of the contract." *Id.* at 18. For the employer, a no-strike clause that a union is obligated to perform is a vital element of the agreement, as it assures uninterrupted operation of the employer's business during the term of the agreement. "A no-strike provision is 'the chief advantage which an employer can reasonably expect from a collective labor agreement'." *United Electrical Workers* v. *N.L.R.B.,* 223 F.2d 338, 341 (D.C. Cir. 1955), *cert. denied,* 350 U.S. 981 (1956). Moreover, the no-strike clause is the principal concession

[2] "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organization, may be brought in any district court of the United States having a jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

the union can make in exchange for the many concessions made by management during the negotiations. The Report continues to say that "the improvement that would result in the stability of industrial relations [because of the no-strike clause's inclusion] is, of course, obvious." *Ibid.* This Court acknowledged that Section 301(a) reflects a congressional effort to promote industrial peace

> which would be purposeless unless both parties to a collective bargaining agreement could have reasonable assurance *that the contract they had negotiated* would be honored.

Dowd Box Co. v. *Courtney,* 368 U.S. 502, 509 (1962) (emphasis supplied). It is apparent, therefore, that Congress was most concerned with assuring both the employer and the union that their contract would be enforced according to the terms reached by good faith negotiation.

Given the statutory premise that collective bargaining agreements are enforceable, the key question to be resolved by the courts was what remedies would be available to the party initiating a Section 301(a) enforcement suit? Congressional debate provides some evidence as to the nature of the remedies intended. In his remarks on Section 302 of the House bill (identical in all major respects to Section 301(a)) Congressman Barden stated that the provision "contemplates not only the ordinary lawsuit for damages but also such *other remedial proceedings,* both legal and *equitable,* as might be appropriate. . . ." 93 Cong. Rec. 3656-57 (1947). (emphasis supplied).

This Court has examined the scope of Section 301(a) in three important cases. In *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448 (1957) this Court construed Section 301(a) to permit federal courts to specifically enforce an arbitration clause if the collective bargaining agreement contained a no-strike clause because the employer's agreement to arbitrate disputes was presumed to be the *quid pro quo* for a no-strike clause. *Textile Workers* v. *Lincoln Mills, supra* at 455. Five years later in *Local 174 Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95 (1962), this Court stated that in an action for damages a no-strike clause could properly be read into a contract containing an arbitration clause, because a strike was inconsistent with the union's contractual duty to arbitrate. The next logical step in the interpretive process of Section 301(a) is found in *Boys Markets, Inc.* v. *Retail Clerks Union, supra.* In that case this Court permitted a court to enjoin a strike in violation of a no-strike clause if the underlying issue causing the strike was subject to resolution through the collective bargaining agreement's arbitration procedure.

Each of these cases indicates this Court's willingness to specifically enforce the mutually binding terms of the collective bargaining agreement, as written by the parties, so that the public policy goal of industrial peace through collective bargaining can be achieved.

The *Amicus Curiae* here asserts that the courts, consistent with the rationale of the foregoing Section 301(a) cases can order the specific performance of an unqualified no-strike clause even where the result of that order is to require a union to abandon a sympathy strike. Section 301(a) does not limit an employer's right to the specific performance remedy for a union's contract breaches to only those circumstances in which work stoppage is precipitated by a dispute which is subject to the collective bargaining agreement's arbitration provision. Furthermore, the anti-injunction provision of the Norris-La Guardia Act does not preclude the award of the traditional contract remedy of specific performance. The relevant legislative history does not suggest that Congress intended the statutory provision to prevent courts from directing unions to perform contractual obligations they had voluntarily undertaken. To so

limit the relief would be to frustrate the effectuation of the paramount and longstanding public policy that "collective bargaining contracts [are] equally binding and enforceable on both parties [to the agreement]." *Textile Workers Union* v. *Lincoln Mills, supra* at 454. Unless the employer can be confident that a no-strike clause will assure uninterrupted plant operation, there is little incentive for him to sign a labor agreement. *Ibid.* That assurance, which is the incentive to enter collective bargaining agreements, is the knowledge that Section 301(a) permits suits to satisfactorily redress breaches of the union's contractual obligation not to strike. The remedy of damages for breach of a no-strike clause is quite inadequate; "the employer's losses are often hard to calculate and . . . the employer may be hesitant to exacerbate relations with the union by bringing a damage action." *Boys Markets, Inc.* v. *Retail Clerks Union, supra* at 248 n. 17. The only adequate relief is the equitable remedy of specific performance of the no-strike clause. The availability of this equitable relief provides an incentive for entering labor contracts. This Court has recognized that if "the principal and most expeditious method by which the [fairly negotiated] no-strike obligation can be enforced [, specific enforcement,] is eliminated," the employer's incentive to concede issues of management prerogatives is substantially dissipated. *Boys Markets, Inc.* v. *Retail Clerks Union, supra* at 248.

Effective implementation of the federal labor policy reflected in Section 301(a) requires, therefore, that specific performance of no-strike clauses be available. The underlying rationale of the *Boys Markets* case is that in those situations where the public policy goal of encouraging industrial peace can best be achieved by means of specifically enforcing the collective bargaining agreement as it was written, the Section 301(a) policy must supersede the anti-injunction policy of the Norris-La Guardia Act. Implicit in the decision is the notion that the employer should receive

the benefit of his bargain. The employer relinquished his right to refuse to permit a neutral party to decide disputes arising under the agreement in exchange for the union's promise that its members would relinquish their right to withhold their services during the term of the contract.

The *Amicus* submits that to limit the relief of specific performance of a no-strike clause to those situations where the work stoppage is in response to an arbitrable grievance, would be to render a portion of Petitioner's and similarly situated employers' contracts illusory. The no-strike clause realistically is the *quid pro quo* for the *entire contract*. This is the only interpretation which the parties to the agreement could have contemplated. The union's promise not to strike is the principal promise that it can make to the employer. An unqualified promise not to strike means that employees will not withhold their services either in protest of a dispute which can be resolved through arbitration or in deference to a picket line maintained at their employer's place of business. In exchange for these assurances, the union receives numerous assurances that the employer will likewise limit its use of economic weapons. The employer's promise to submit grievances to a third party for resolution is but one of these. The employer relinquishes significant management prerogatives by agreeing to comply with the numerous contract provisions concerning the wage structure, promotion and lay off of personnel in a specific order, and fringe benefits. Unless specific performance of the unqualified no-strike clause is permitted, the employer is not given the full benefit of his bargain with the union in the sympathy strike situation. It is, therefore, apparent that if the employer is not assured that the union's no-strike promise is fully enforceable, the incentive to enter a collective bargaining agreement is diminished. That consequence is clearly contrary to the fundamental theory underlying Section 301(a): industrial peace through mutually binding labor contracts. S. Rep. No. 80-105, *supra*.

CONCLUSION

This Court must not stop at the limits of *Boys Markets* in its process of developing the atmosphere in which "the industrial peace through enforcement of collective bargaining agreements" can be nurtured. It must not limit its perception of the realities of the labor-management relationship. It must recognize that in a contract like Petitioner's, the union has freely agreed not to authorize a strike or work stoppage under any circumstances;[3] it has legitimately contracted away its members' right to cease work in protest of an arbitrable grievance and in support of another employee group's protest. If the decision of the court below is affirmed, this Court will be accepting a conceptualization of the collective bargaining process which does not reflect reality. The no-strike clause is not the *quid pro quo* for the arbitration clause alone; it is given in exchange for *all* the employer's promises, that is, for the entire contract. Unless the no-strike clause is enforced in the sympathy strike situation, the collective bargaining agreement is not recognized fully and the goal of industrial stability underlying both Section 301(a) and the cases interpreting it cannot be achieved.

Respectfully submitted,

NATIONAL ASSOCIATION OF MANUFACTURERS
OF THE UNITED STATES OF AMERICA

By RICHARD D. GODOWN
General Counsel

LESLIE CARTER SILVER
Assistant General Counsel

1776 F Street, N.W.
Washington, D.C. 20006

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[3] This union promise is subject to a very limited exception. *Mastro Plastics Corp.* v. *NLRB*, 350 U.S. 270 (1956).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-339

BUFFALO FORGE COMPANY, *Petitioner,*

v.

UNITED STEELWORKERS OF AMERICA, ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

GUY FARMER
WILLIAM A. GERSHUNY
FARMER, SHIBLEY, MCGUINN & FLOOD
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Bituminous Coal Operators' Association, Inc.

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TABLE OF CONTENTS

	Page
I. Interest of Bituminous Coal Operators' Association	1
II. Question Presented	3
III. Statement of the Case	3
A. The Instant Case	3
B. Recent United Mine Workers Litigation	4
C. The Roving Picket Phenomenon in the Coal Industry	5
IV. Argument	8
V. Conclusion	10

TABLE OF CITATIONS

STATUTES:

Labor-Management Relations Act of 1947, 29 U.S.C.
Section 203(d), 29 U.S.C. 173(d) 8
Section 301, 29 U.S.C. 185 ..... 3, 5

CASES:

Armco Steel Corp. v. *United Mine Workers,* 505 F.2d 1129 (C.A. 4, 1974), *cert. denied* No. 74-1574 ....4, 8, 9

Boys Markets v. *Retail Clerks Union,* 398 U.S. 235 .. 8, 9

Gateway Coal Co. v. *United Mine Workers,* 414 U.S. 368 .....4, 8, 10

Inland Steel Co. v. *United Mine Workers,* 505 F.2d 293 (C.A. 7, 1975) 5

Island Creek Coal Co. v. *United Mine Workers,* 507 F.2d 650 (C.A. 3, 1975), *cert. denied* No. 74-1573 .. 4, 9

Steelworkers Trilogy, 363 U.S. 564, 574, 593 ..... 8, 9

Steelworkers v. *Warrior & Gulf Navigation Co.,* 363 U.S. 574 8

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BRIEF OF BITUMINOUS COAL OPERATORS' ASSOCIATION, INC., AMICUS CURIAE

The Bituminous Coal Operators' Association, Inc., respectfully files this brief *amicus curiae,* with the written consent of all parties, pursuant to Rule 42 of the Rules of the Supreme Court.

I

INTEREST OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION

The Bituminous Coal Operators' Association, Inc., (hereinafter referred to as BCOA) is a voluntary non-profit association of bituminous coal mine operators. It was established in 1952 out of an effort to bring a

degree of stability to the labor-management relations chaos and to end the lengthy and bitter strikes that had long characterized the coal industry. Since that time, BCOA has continued to exist for the purpose of negotiating periodic labor agreements with the United Mine Workers, aiding its members in interpreting these agreements and devising and strengthening mechanisms for bringing about industrial peace in the coal industry.

BCOA membership is open to any bituminous coal producing company. All of its members are signatories to the National Bituminous Coal Wage Agreement. Its membership includes both individual coal companies and state and local coal associations. The direct and indirect members of BCOA are located throughout the coal mining areas encompassing all of the coal producing states, and collectively produce at least 65 percent of the bituminous coal produced in the United States.

BCOA, therefore, has a continuing interest in preserving and strengthening the contractual procedures for resolving grievances and disputes and in bringing industrial peace to the coal fields.

The decision of the court below, if allowed to stand, tends to weaken the efficacy of contract grievance-arbitration procedures generally, and could contribute to a further proliferation of the wildcat strikes that are threatening to undermine the stability and continuity of production in the coal mine industry and endanger the Nation's supply of fuel. The decision below is contrary to the decisions of other Courts of Appeals in coal mining cases, and if allowed to stand and if given broad application, could impinge directly and disastrously on BCOA's two major concerns—the stability of labor relations in the coal industry and the continued ability of the coal industry to meet this Nation's increasing energy needs.

II

QUESTION PRESENTED

Whether a federal court may, under Section 301 of the Labor-Management Relations Act of 1947, order arbitration and enjoin a work stoppage occasioned by the refusal of members of Union A to cross a picket line established by Union B, where Union A has an agreement with the employer containing a grievance-arbitration procedure for the settlement of disputes and containing an express or implied agreement not to strike.

III

STATEMENT OF THE CASE

A. The Instant Case

The issues in this case arose when Respondent labor unions directed their members (production and maintenance employees) to honor lawful picket lines established by other labor unions representing the Company's office clerical and technical employees.

Section 14b of the labor agreement between the Company and its production and maintenance employees contained a provision prohibiting "strikes, work stoppages or interruption or impending of work", and Section 26 established a grievance-arbitration provision for the resolution of "differences . . . as to the meaning and application of this Agreement, or . . . any trouble of any kind . . . in the plant. . . ."

The Court of Appeals, on May 1, 1975, affirmed the District Court's refusal to issue a preliminary injunction, on the ground that such relief was precluded by Section 4 of the Norris-LaGuardia Act.

B. Recent United Mine Workers Litigation

Only recently, this Court has denied two United Mine Workers' Petitions for Certiorari in cases where work stoppages over the presence of stranger pickets have been enjoined and arbitration ordered under the National Bituminous Coal Wage Agreement. *United Mine Workers of America* v. *Island Creek Coal Company,* No. 74-1573; *United Mine Workers of America* v. *Armco Steel Corporation,* No. 75-1574.

In *Island Creek,* miners from other UMWA local unions, protesting an arbitrator's decision at the Company's No. 2 mine, picketed out employees at other Company mines. In *Armco,* widespread work stoppages occurred at coal mines throughout the State of West Virginia due to the presence at the mines of coal miners protesting the Governor's regulation of gasoline sales during the national oil crisis in 1974.

The National Bituminous Coal Wage Agreement contains elaborate grievance-arbitration procedures for the final and binding settlement of safety disputes and "differences . . . as to the meaning and application of the provisions of this Agreement, . . . differences . . . about matters not specifically mentioned in this Agreement, or . . . any local trouble of any kind . . . at the mine. . . ."[1]

In these cases, the Courts of Appeals for the Third and Fourth Circuits concluded that the refusal of coal miners to cross stranger picket lines was an ar-

[1] The provisions of the current labor agreement are identical, in this respect, with those of the 1968 labor agreement considered in *Gateway Coal Co.* v. *United Mine Workers,* 414 U.S. 368, and those of the 1971 labor agreement considered in *Armco* and *Island Creek.*

bitrable issue under the National Bituminous Coal Wage Agreement, and that district courts were empowered to order arbitration and to enjoin such work stoppages under Section 301 of the Labor-Management Relations Act.[2]

C. The Roving Picket Phenomenon in the Coal Industry

This matter is of the gravest concern to BCOA because of the high incidence of wildcat strikes in the coal industry. In the first nine months of 1975 alone, UMWA members engaged in more than 2,000 unauthorized work stoppages under the National Bituminous Coal Wage Agreement and lost more than 1.1 million man-days of work, $61 million in wages and $16 million in employer contributions to their pension and benefit trust. The industry and Nation lost 11 million tons of coal.

In terms of man-days lost, these nine-month losses already exceed the losses for *all* of 1974, which was itself the worst year to that time for wildcat strikes in the modern history of the industry.

[2] The Court of Appeals for the Seventh Circuit reached an identical result in *Inland Steel Co.* v. *United Mine Workers,* 505 F.2d 293, a case involving the picketing out of coal mines by roving miners from other mines protesting the Pay Board's refusal to approve the full amount of a pay increase. No petition for writ of *certiorari* was filed in this case by the Mine Workers.

Losses since 1970, as reported by BCOA members, reflect an alarming increase in the pattern of illegal work stoppages throughout the Nation's coal fields:

	Man-days Lost	Pay Roll Loss	Tonnage Loss	Pension & Benefit Trust Fund Loss
1970	593,000	$21,459,000	11,389,000	$ 4,555,000
1971	565,000	21,981,000	8,762,000	3,739,000
1972	516,000	21,783,000	8,372,000	5,023,000
1973	529,000	26,298,000	7,043,000	4,817,000
1974	1,023,000	53,819,000	11,686,000	10,509,000
1/1/75-9/30/75	1,113,000	61,708,000	11,750,000	16,871,000

These losses are the product of two tragic United Mine Workers' traditions, frequently working in tandem. The first is the "wildcat strike", a work stoppage, not authorized by either the International Union or officials of the UMWA District or local union, which halts production at a mine or mines, usually for one day or more, over an arbitrable issue. Typically, the work stoppage results from the tacit agreement of members at a particular mine to "honor" the decision of a single miner to withhold his services. Traditionally, that decision is signaled when the disgruntled miner spills out his drinking water.

The close proximity of coal mines to one another in many coal producing areas fosters the second UMWA tradition, the "roving picket". It is a notorious fact throughout these coal producing regions that the mere presence of a single picket at or near a coal mine has long been enough to cause a complete shutdown of the mine. Roving pickets have long followed a familiar pattern of going from mine to mine shutting them down because of a single grievance at a particular mine that

could be resolved readily by peaceful arbitration under the contract. The identity of the picket and the reason for his presence at the mine are both wholly immaterial to the virtually foreordained "decision" of the UMWA members at the picketed mine to refuse to work.[3]

The roving picket phenomenon in the coal industry alone is responsible for the greatest portion of the annual losses sustained both by labor and management. In August, 1975, more than 500,000 man-days and $31,000,000 in wages were lost when roving miner pickets brought coal production in West Virginia and neighboring coal regions in Virginia, Kentucky and Ohio to a halt for several weeks, over a dispute stemming originally from the discharge of a local union president. At the same time, virtually all the mines in Illinois (UMWA District 12) were shut down for an extended period by wildcat strikes over some other ostensible issue relating to rotation of shifts, an issue dealt with specifically in the 1974 labor agreement.

Five months earlier, in March and April, 1975, more than 200,000 man-days were lost when roving miner pickets closed mines in Ohio and northern West Virginia for several weeks, over a dispute at the mines of a single Company as to the meaning and application of a new contract provision. And, one year earlier, in February, 1974, more than 200,000 man-days similarly were lost when miner pickets fanned out through the coal fields of West Virginia to close mines in protest of the Governor's gasoline rationing program. It was

[3] In a number of UMWA districts, there exists yet another tradition. The "24-hour rule", which dictates that the first shift to go out on strike shall be the first to return to work, compounds losses particularly those occasioned by the wildcat strike of short duration.

this episode which ultimately led to the Court of Appeals decision in *Armco,* holding the strikes to be enjoinable.

IV

ARGUMENT

The Decision of the Court Below Conflicts with Fundamental Principles of Labor Law and Policy Established by the Court

The decision below clearly is incorrect and inconsistent with decisions of this Court in the *Steelworkers Trilogy,* 363 U.S. 564, 574 and 593 (1960), *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970) and *Gateway Coal Company* v. *United Mine Workers,* 414 U.S. 368 (1974).

Those decisions make it abundantly clear that nothing is more basic to the national labor policy than the principle of fostering industrial stability by voluntary settlement of labor disputes without resort to self-help and industrial strife. Indeed, Section 203(d) of the Labor-Management Relations Act of 1947, 29 U.S.C. § 173(d), manifests the Congressional resolve that:

> "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. . . ."

Basic to this policy is the strong presumption favoring arbitration of labor disputes, unless specifically excluded by the terms of the grievance-arbitration provisions. As the Court stated in *Steelworkers* v. *Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582-3 (1960):

> "An order to arbitrate the particular grievance shall not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

Ten years after the *Steelworkers Trilogy,* this Court, in *Boys Markets,* gave further expression to the principle favoring arbitration of labor disputes and held that a federal court may compel arbitration and enjoin a work stoppage over an arbitrable grievance.

The Court below, while recognizing *Boys Markets,* nevertheless was so blinded by the "over a grievance" language that the critical finding—whether the picket line dispute is or is not arbitrable under the grievance-arbitration procedures of the particular contract—was never made. The Court never so much as referred to the contract provision, which specifically makes arbitrable not only traditional contract disputes but also "any trouble of any kind" (Petition, p. 13a). Had it done so, the Court below, we submit, (if its decision were to be consistent with the rulings of this Court) would have had to conclude, as did the Courts of Appeals in *Armco* and *Island Creek Coal,* that the employees' refusal to cross the picket lines was arbitrable.

Indeed, as pointed out by the Court of Appeals in *Island Creek Coal,* 507 F.2d at 653, the issue which the employer in the § 301 suit seeks to compel the employees to arbitrate—the right of the employees under the contract to refuse to cross the picket line—is precisely the same issue which would be arbitrated in a subsequent disciplinary proceeding against the employees involved.

To hold, as did the Court below, that the issue "is not over a grievance with Buffalo Forge"[4] is to give judicial sanction to a union's avoidance of bargained-for no-strike pledges. Such withholding of effective judicial relief in an entire category of premeditated work stoppages "not only runs directly counter to our national policy of promoting labor stablility but opens new and hazardous avenues in labor relations for unrest and strikes." *Gateway Coal Co.* v. *United Mine Workers,* 466 F.2d at 1162 (Rosenn, M., dissenting).

V

CONCLUSION

In the interest of stability of employment and adherence to labor agreements in industry at large, including the energy-critical [redacted] coal mining industry, we urge that the decision of the Court below be reversed.

Respectfully submitted,

GUY FARMER
WILLIAM A. GERSHUNY
FARMER, SHIBLEY, MCGUINN & FLOOD
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Bituminous Coal Operators' Association, Inc.

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[4] Petition, p. 7a.

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IN THE

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Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I.W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

(Continued on inside front cover)

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE

LAWRENCE B. KRAUS
General Counsel
RICHARD B. BERMAN
Labor Relations Counsel
G. BROCKWEL HEYLIN
Labor Relations Attorney
Chamber of Commerce of the
United States of America
1615 H Street, N.W.
Washington, D.C. 20062
WILLIAM J. CURTIN
HARRY A. RISSETTO
GERALD S. HARTMAN
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036

Attorneys for the Chamber of Commerce of the United States of America

Of Counsel:
MORGAN, LEWIS, BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

INDEX

Page

STATEMENT OF INTEREST 2

ARGUMENT:

The Norris-LaGuardia Act Does Not Preclude The Specific Enforcement Of A No-Strike Clause By A Court Pursuant To Section 301 Of The Labor Management Relations Act 3

CONCLUSION 16

TABLE OF CITATIONS

Cases:

Anheuser-Busch, Inc. v. Teamsters Local No. 633, National Conference of Brewery and Soft Drink Workers, etc., 511 F.2d 1097 (1 Cir. 1975), cert. den. ___U.S.___, 44 L.W. 3226 (1975) 13

William E. Arnold Co. v. Carpenters District Council of Jacksonville and Vicinity et al., 417 U.S. 12 (1974) 2, 11

ALCO Zander v. Amalgamated Clothing Workers of America, 35 F.2d 203 (E.D. Pa. 1929) 9

Bedford Cut Stone Co. v. Journeymen Stone Cutter's Association of North America, 274 U.S. 37 (1927) 9

Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970) 4, 7, 8, 9, 10, 11, 12

Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921) 9

Eisen v. Carlisle & Jacquelin, 417 U.S. 156 (1974) 13

Gateway Coal Co. v. United Mine Workers of America et al., 414 U.S. 368 (1974) 3, 4, 5, 6

Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229 (1917) 9

Page

Inland Steel Co. v. Local Union No. 1545, United Mine Workers, 505 F.2d 293 (7 Cir. 1974) 6, 12

Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co., 369 U.S. 95 (1962) 4, 14

Monogahela Power Company v. Local No. 2322 International Brotherhood of Electrical Workers, AFL-CIO, et al., 484 F.2d 1209 (4 Cir. 1973) 13

NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, et al., 502 F.2d 321 (3 Cir. 1974), cert. den. 419 U.S. 1049 (1974) 13

National Labor Relations Board v. Rockaway News Supply Co., Inc., 345 U.S. 71 (1953) 12, 14

Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) 7, 8, 10

Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U.S. 448 (1957) 11

United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960) 4

United Steelworkers of America v. Enterprise Corporation, 363 U.S. 593 (1960) 4

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 4, 12

Valmac Industries, Inc. v. Local 425, ____F.2d ____, 89 LRRM 3073 (8 Cir. 1975) 13

Statutes:

Labor Management Relations Act

Section 203(d) (29 U.S.C. § 173(d)) 5

Section 301(a) (29 U.S.C. § 185(a)) 3, 7, 10

Norris-LaGuardia Act

Section 2 (29 U.S.C. § 102) 8

Section 4 (29 U.S.C. § 104) 7

Page

Congressional Materials:

75 Cong. Rec. 5462 (1932) 9

75 Cong. Rec. 5463 (1932) 10

S. Rep. No. 153, 72d Cong., 1st Sess. 16 (1932) 10

S. Rep. No. 163, 72d Cong., 1st Sess. 8 (1932) 9

H.R. Rep. No. 669, 72d Cong., 1st Sess. (1932) 10

Miscellaneous:

Frankfurter & Greene, The Labor Injunction (1930) 9

Mendelsohn, *Enforceability Of Arbitration Agreements Under Taft-Hartley Section 301*, 66 Yale L.J. 167 (1956) 10

Relias, *The Developing Law Under Boys Markets*, 23 Lab. L.J. 758 (1972) 14

Stewart, *No Strike Clauses in The Federal Court*, 59 Mich. L. Rev. 673 (1961) 10

Witte, *The Government and Labor Disputes* (1932) 9

Witte, *The Federal Anti-Injunction Act*, 16 Minn. L. Rev. 638 (1932) 9

Note, *Accommodation Of The Norris-LaGuardia Act To Other Federal Statutes*, 72 Harv. L. Rev. 354 (1958) 10

Recent Development, *Injunction May Issue Against Labor Unions To End Strike Over Safety Disputes Despite Absence Of A No-Strike Clause In Collective Bargaining Agreement*, 63 Geo. L.J. 275 (1974) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-339

BUFFALO FORGE COMPANY,

Petitioner,

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO; I.W. ABEL as International President; MITCHEL F. MAZUCA, Ind. and as District Director; JOHN GRUKA, Ind. and as International Representative of United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 1874 of the United Steelworkers of America, AFL-CIO; VALENTINE F. ZIZZI, Ind. and as President; VALENTINE OLEJNICZAK, Ind. and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO;

LOCAL UNION NO. 3732 of the United Steelworkers of America, AFL-CIO; KERMIT HASELEY, Ind. and as President; and ALFRED LIGAMMARI, Ind. and as Vice President of Local Union No. 3732 of the United Steelworkers of America, AFL-CIO;

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE*

1. The Chamber of Commerce of the United States of America is a federation consisting of a membership of over 3,700 state and local chambers of commerce and trade and professional associations, a direct business membership in excess of 52,000 and an underlying membership of approximately 5,000,000 business firms and individuals. It is the largest association of business and professional organizations in the United States.

2. The Chamber regularly represents the interests of its member-employers in important labor relations matters vitally affecting those interests. Such representation constitutes a significant aspect of the Chamber's functions. Accordingly, the Chamber has sought to advance those interests in a wide spectrum of labor relations litigation.**

*Consents of all parties to the Chamber's participation have been filed with this Court pursuant to Rule 42 of the Supreme Court Rules.

**E.g., *Connell Construction Co., Inc. v. Plumbers and Steamfitters Local Union 100*, (Supreme Court), No. 73-1256; *Gateway Coal Company v. United Mine Workers of America, et al.*, 414 U.S. 368 (1974); *William E. Arnold Co. v. Carpenters District Council of Jacksonville, etc., et al.*, 417 U.S. 12 (1974); *Alexander v. Gardner-Denver Co.*, (Supreme Court) No. 72-5847; *Super Tire Engineering Company, Supercap Corporation and A. Robert Schaevitz v. Lloyd W. McCorkle, et al.*, (Supreme Court), No. 72-1554; *Marco DeFunis and Betty DeFunis, his wife v. Charles Odegaard, President of the University of Washington, et al.*, (Supreme Court), No. 73-235; *N.L.R.B. v. Bell Aerospace Company Division of Textron, Inc.*, (Supreme Court), No. 72-1598, *Boys Markets v. Retail Clerks Union*, 398 U.S. 235 (1970); *N.L.R.B. v. The Boeing Company, et al.*, 93 S. Ct. 1952 (1973); *N.L.R.B. v. Granite State Joint Board*, 409 U.S. 213 (1972); *N.L.R.B. v. Pittsburgh Plate Glass Co.*, 404 U.S. 517 (1971).

3. The question presented in the instant case is a matter of continuing importance to the Chamber. Specifically, the parties ask this Court whether a no-strike clause in a collective bargaining agreement is breached and can be enforced by a Federal District Court issuing an injunction pursuant to §301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), when a union orders employees in the bargaining unit to honor a picket line established by a different local of the same union on behalf of employees in another bargaining unit at the employer's same facility. This question is of particular concern to the Chamber and its members because any rule which may emerge will necessarily exert a substantial impact on the ability of the Chamber's members to enforce a no-strike pledge contained in a collective bargaining agreement and to obtain prompt injunctive relief to curtail work stoppages which violate this pledge. The rationale of the Court below, if adopted, will not only interfere with an employer's right to enforce its contractual settlement with the union, but also will defeat the national objective of industrial peace through contractual agreement.

ARGUMENT

THE NORRIS-LAGUARDIA ACT DOES NOT PRECLUDE THE SPECIFIC ENFORCEMENT OF A NO-STRIKE CLAUSE BY A COURT PURSUANT TO SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT.

In the context of broad arbitration and no-strike clauses, this Court implicitly recognized in *Gateway*

Coal Co. v. United Mine Workers, 414 U.S. 368 (1974), that all coercive economic action during the term of the Agreement is presumptively enjoinable unless an express and clear exception permitting such activity is explicitly included in the collective bargaining agreement. *Id.* at 379-380. *See also* Recent Development, *Injunction May Issue Against Labor Unions To End Strike Over Safety Disputes Despite Absence Of A No-Strike Clause In Collective Bargaining Agreement*, 63 Geo. L.J. 275, 277 (1974). This conceptual framework favoring peaceful resolution of disputes, founded upon the *Steelworkers* trilogy,[1] has developed to such an extent that even the no-strike clause itself may be implied where the contract specifically mandates arbitration of the grievance involved. *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95 (1962). The approach foreshadowed by the Court in *Gateway Coal* is a useful and a pragmatic one because it both affirms the obligations the parties freely entered into in the collective bargaining agreement[2] and gives enforceability to the parties' commitment.[3] *See*

[1]*United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); and *United Steelworkers of America v. Enterprise Corp.*, 363 U.S. 593 (1960).

[2]In *Gateway Coal*, this Court said that the scope of both clauses "depends on the intent of the contracting parties." *Id.* at 382.

[3]This Court, quoting from *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), stated in *Gateway Coal* as follows:

> Denial of all equitable relief from breaches of no-strike obligations would have caused "devastating implications for the enforceability of arbitration agreements." 398 U.S. at 247.

Id. at 382.

Gateway Coal Co. v. United Mine Workers, supra at 382.

Furthermore, this judicial responsiveness to the parties' contractual bargain is in harmony with Section 203(d) of the Labor Management Relations Act, 29 U.S.C. §173(d), which states as follows:

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method of settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.

In this particular litigation now before the Court, the terms of the no-strike clause[4] and the grievance arbitration clause[5] when read together[6] unequivocally

[4]The no-strike clause states in part as follows:

> There shall be no strikes, work stoppages, or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented.

[5]The grievance arbitration clause states as follows:

> Should differences arise between the Company and any employee covered by this agreement as to the meaning and application of the provisions of this Agreement or should *any trouble of any kind arise in the plant*, there shall be no suspension of work on account of such differences.... [emphasis added]
>
> . . .
>
> In the event the grievance involves a question as to the meaning and application of the provisions of this Agreement, and has not been previously satisfactorily adjusted, it may be submitted to arbitration upon written notice of the Union or the Company.

[6]In *Gateway Coal*, this Court stated that "the agreement to arbitrate and the duty not to strike should be construed as having coterminous application." *Id.* at 382.

manifest the intent of the parties that there shall be no work disruption "should *any trouble of any kind arise* in the plant." [emphasis added]. In fact, this language is broader than language in a United Mine Workers arbitration clause considered in *Gateway Coal* and which was called "exceptionally broad" in a Seventh Circuit decision.[7] But the Second Circuit below felt restricted by what it perceived to be the "narrowness . . . of injunctive relief" permitted under §301(a), and therefore refused to issue an injunction.[8]

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[7] In *Gateway Coal*, this Court described the arbitration clause between the parties as follows:

> This arbitration clause governs disputes "as to the meaning and application of the provisions of this agreement," disputes "about matters not specifically mentioned in this agreement," and "any local trouble of any kind aris[ing] at the mine."

Id. at 375. In *Inland Steel Co. v. Local Union No. 1545, United Mine Workers*, 505 F.2d 293 (7 Cir. 1974), the Court commented on the United Mine Workers arbitration clause as follows:

> It is our conclusion that the "any local trouble of any kind aris[ing] at the mine" language contained in this exceptionally broad arbitration clause is itself expansive enough to encompass the present disputes. A work stoppage which results from the honoring of stranger picket lines by company employees is certainly local trouble at the mine. Any other construction of this language would simply be ignoring the realities of the situation.

Id. at 298. This same conclusion should apply to the grievance clause language in this case "should any trouble of any kind arise in the plant."

[8] The Second Circuit stated as follows:

> In assessing the extent to which §301(a) modified the anti-injunction policy of Norris-LaGuardia, we base the tenor of our inquiry on the Court's emphasis in *Boys Market* on the narrowness of its holding in favor of injunctive relief. *Id.* at 253. *Compare Emery Air Freight Corp. v. Local Union 295*, 449 F.2d 586, 588 (2 Cir. 1971). In narrowly construing the exception to §4 of the Norris-LaGuardia Act carved out by §301(a) in the view of the *Boys Market* Court, then, we take particular note of the various indications in *Boys Market* and in the *Sinclair Refining* dissent upon which the latter drew that only strikes over a grievance which the union has agreed to arbitrate are within the scope of the exception. *See e.g., Boys Market, supra*, 398 U.S. at 248, 254; *Sinclair Refining, supra*, 370 U.S. 195 at 217-18, 224-25, 228. The strike at issue in the instant case is not over a grievance with Buffalo Forge but instead is simply a manifestation of the striking workers' deference to other employees' picket lines.

Id. at 89 LRRM 2303, 2305.

Such a constrained reading of the accommodation required to be made between Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104, and Section 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a), is a short-sighted and distorted one which exaggerates the "surface conflict"[9] between the two statutes while disregarding their intended statutory purposes. Fifteen years have passed since the *Steelworkers* trilogy cast the hope of industrial peace towards contractually agreed upon methods for the resolution of disputes. Five years ago in *Boys Markets*, this Court found in a further refinement of a developing labor law no conflict between a Norris-LaGuardia Act designed to assist emerging labor

[9] In *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 217 (1962), Justice Brennan, in his dissent, emphasized the "surface conflict" between the two statutory commands.

organizations[10] and enjoining a modern union's violation of a no-strike clause it had agreed to honor. While it is true that collective bargaining agreements-unlike most contracts–are living documents that regulate ongoing relationships, it is also true that they are, and should be in all respects, binding fully on both parties as are other contractual commitments.

In recognizing the need for "an efficacious remedy" to uphold the union's commitment to refrain from striking, this Court in *Boys Markets* stated that issuing an injunction to enforce the contract did not violate "the central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations" because an injunction "merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration." *Id.* at 252-53. The *Boys Markets* Court emphasized the sharp distinction between (1) the enjoining of a union's efforts to organize employees for representational purposes and (2) the specific enforcement of agreements contained in labor contracts.[11] This difference can be highlighted by a brief examina-

[10]*See* Section 2 of the Norris-LaGuardia Act which expressly states the public policy directed at protecting organizing campaigns of the nascent labor movement.

[11]Justice Brennan, dissenting in *Sinclair*, recognized this difference when he said:

> I emphasize that the question in this case is not whether the basic policy embodied in Norris-LaGuardia against the injunction of activities of labor unions has been abandoned in actions under §301; the question is simply whether injunctions are barred against strikes over grievances which have been routed to arbitration by a contract specifically enforceable against both the union and the employer.

Id. at 224.

tion of the context in which the Norris-LaGuardia Act was created.

In *Boys Markets*, this Court acknowledged the historical setting leading to the passage of the Norris-LaGuardia Act as follows:

> The Norris-LaGuardia Act was responsive to a situation totally different from that which exists today. In the early part of this century, the federal courts generally were regarded as allies of management in its attempt to prevent the organization and strengthening of labor unions; and in this industrial struggle the injunction became a potent weapon that was wielded against the activities of labor groups. The result was a large number of sweeping decrees, often issued *ex parte*, drawn on an *ad hoc* basis without regard to any systematic elaboration of national labor policy. *See Drivers' Union v. Lake Valley Co.*, 311 U.S. 91, 102 (1940).

Id. at 250.[12] This use of the injunction received much criticism from legislators and scholars before the passage of the Norris-LaGuardia Act.[13] The legislative

[12]That management utilized the labor injunction to prevent union organizational drives is demonstrated by the case law prior to the enactment of the Norris-LaGuardia Act. *E.g., Bedford Cut Stone Co. v. Journeymen Stone Cutter's Association of North America*, 274 U.S. 37 (1927); *Duplex Printing Press Co. v. Deering*, 254 U.S. 443 (1921); *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 (1917); *International Organization of United Mine Workers of America v. Red Jacket Consolidated Coal & Coke*, 18 F.2d 839 (4 Cir. 1927); and *ALCO Zander v. Amalgamated Clothing Workers of America*, 35 F.2d 203 (E. D. Pa. 1929).

[13]*See* 75 Cong. Rec. 5462, 72d Cong. 1st Sess. (1932); S. Rep. No. 163, 72d Cong., 1st Sess. at 8 (1932); Frankfurter & Greene, *The Labor Injunction* (1930); Witte, *The Government and Labor Disputes* (1932); and Witte, *The Federal Anti-Injunction Act*, 16 Minn. L. Rev. 638 (1932).

history of the Norris-LaGuardia Act indicates that the proscriptions of the Act were directed primarily towards using injunctions to disrupt union organizational campaigns.[14] These concerns leading to the passage of the Norris-LaGuardia Act demonstrate that the prohibition of the enforcement of contractual commitments contained in a collective bargaining agreement was not the motivation for its passage. *See* Mendelsohn, *Enforceability of Arbitration Agreements Under Taft-Hartley Section 301,* 66 Yale L. J. 167,182 (1956); Stewart, *No-Strike Clauses in the Federal Court,* 59 Mich. L. Rev. 673, 678 (1961); and Note, *Accommodation of the Norris-LaGuardia Act To Other Federal Statutes,* 72 Harv. L. Rev. 354, 356 and 365 (1958).

Mr. Justice Brennan dissenting in *Sinclair* said that the "overriding purpose of §301 [is to] assist [in] the enforcement of collective agreements." *Id.* at 219. This purpose behind §301 must be superimposed over both the impetus for the enactment of the Norris-LaGuardia Act and the evolution of the labor movement in this country.[15] When this perspectice is utilized the

[14]*See* 75 Cong. Rec. 5463, 72d Cong. 1st Sess. (1932) (Remarks of Mr. O'Connor); *See* H.R. Rep. No. 669, 72d Cong. , 1st Sess. (1932); S. Rep. No. 153, 72d Cong., 1st Sess. at 16 (1932).

[15]This Court recognized that this contractual approach must be taken in *Boys Markets, supra,* when it observed that:

> Statutory interpretation requires more than concentration upon isolated words; rather, consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions.

Id. at 250. Also, this Court in *Boys Markets* characterized the historical dynamics of the growth of labor organizations as follows:

> As labor organization grew in strength and developed toward maturity, congressional emphasis shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes.

Id. at 251.

rationale for specifically enforcing a no-strike clause without regard to the characterization of the grievance becomes evident. Obviously, this Court recognized in *Boys Markets* employers will not assume obligations to arbitrate disputes unless a remedy is available to enforce "the concomitant undertaking of the union to refrain from striking." *Id.* at 252.[16] This *quid pro quo* relationship fosters the congressional policy favoring the voluntary establishment of a mechanism for the peaceful resolution of labor disputes while at the same time not interfering with the "core purpose" of the Norris-LaGuardia Act. *Id.* at 253.[17] Concern over the nature of the grievance must necessarily result in a district court functioning as an arbitrator, a role which this Court has consistently stated results in undue interference with the proper development of private sector labor relations. *See United Steelworkers of*

[16]*See also William E. Arnold Co. v. Carpenters District Council of Jacksonville and Vicinity et al.,* 417 U.S. 12 (1974), where the Court said as follows:

> The assurance of swift and effective judicial relief provides incentive to eschew economic weapons in favor of binding grievance procedures and no-strike clauses.

Id. at 18.

[17]Perhaps, the best evidence of this lack of interference is the fact that Section 8 of the Norris-LaGuardia Act denies injunctive relief to any person who has failed to make every reasonable effort to settle the dispute by negotiation, mediation or voluntary arbitration. *See Textile Workers Union of America v. Lincoln Mills of Alabama,* 353 U.S. 448, 458 (1957).

America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), where the Court said as follows:

> The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of courts.

Id. at 581. *See also Inland Steel Co. v. Local Union No. 1545, United Mine Workers,* 505 F.2d 293, 299 (7 Cir. 1974). If the parties wish to exclude a matter from arbitration, then the parties should be required to state so specifically.[18] The judicial precedent since the *Boys Markets* decision has vividly pointed up the shortcomings of requiring the federal judiciary to look behind the breach of the no-strike clause in an effort to identify and evaluate the dispute that resulted in unlawful economic action and its relationship to other provisions in the collective bargaining agreement. *See*

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[18]In *National Labor Relations Board v. Rockaway News Supply Co., Inc.*, 344 U.S. 71 (1953), this Court said as follows:

> In the section by which the Labor Management Relations Act prescribes certain practices of labor organizations which shall be deemed unfair, there is a proviso that nothing therein "shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act...." This clearly enables contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree. And nothing in the Act prevents their agreeing upon contrary provisions if they consider them appropriate to the particular kind of business involved. [footnote omitted].

Id. at 80.

Anheuser-Busch, Inc. v. Teamsters Local No. 633, National Conference Of Brewery and Soft Drink Workers, etc., 511 F.2d 1097 (1 Cir. 1975), *cert. den.*, ___U.S.___, 44 L. W. 3226 (1975); *Monongahela Power Company v. Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO, et al.*, 484 F.2d 1209 (4 Cir. 1973); and *Valmac Industries, Inc. v. Local 425,* __F.2d__, 89 LRRM 3073 (8 Cir. 1975). The performance of this task involves the federal judiciary unnecessarily in the substantive administration of the collective bargining agreement and serves to disrupt and often frustrate the interests underlying Section 301 without furthering the legislative purposes underlying the Norris-LaGuardia Act. The experience of the federal judiciary in administering the *Boys Markets* decision supports the application of its legal theory to breaches of contractual no-strike clauses without preconditioning injunctive relief on a difficult factual and legal analysis of the nature of the underlying dispute. *See Monogahela Power Company v. Local No. 2332 International Brotherhood of Electrical Workers, AFL-CIO, et al., supra; Valmac Industries, Inc. v. Local 425, supra;* and *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, et al.*, 502 F.2d 321 (3 Cir. 1974), *cert. den.* 419 U.S. 1049 (1974). The function of the Court should be no more[19] than to enforce the contractual obligations

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[19]A court's role when asked to make such a determination is somewhat analogous to a court's inquiry pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure as to whether a class action has been established. *See Eisen v. Carlisle & Jacquelin,* 417 U.S. 156 (1974), where the Court said as follows:

> We find nothing in either language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action.

Id. at 177.

that the parties entered into freely. *See National Labor Relations Board v. Rockaway News Supply Co., Inc.*, 345 U.S. 71, 77 (1953). To do more would destroy the balance which this Court described in *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of America v. Lucas Flour Co.*, 369 U.S. 95 (1962), as follows:

> The ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace.

Id. at 104.[20]

It is difficult for this *amicus curiae* to see how following the decision of the Second Circuit below will in any way help us to reach the goal of industrial peace through orderly collective bargaining. On the contrary, it would seem to encourage a proliferation of disputes to those personally uninvolved. Moreover, by excusing one party to the contract from having to stand by its bargain, that approach reduces the incentive to

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[20]*See* Relias, *The Developing Law Under Boys Markets*, 23 Labor Law Journal 758 (1972), where the author stated as follows:

> The *Ourisman* case [*Ourisman Chevrolet Co. v. Automotive Lodge No. 1486*, ___F. Supp.___, 65 LC ¶11,751 (D. D.C. 1971) exemplifies at least one unfortunate aspect of *Boys Markets*, which was discussed earlier: So many questions are unanswered as to the standards to be used in determining whether a collective bargaining agreement contains a mandatory arbitration provision that a Court can distinguish *Boys Markets* given only minimal assistance from the particular facts of the case.

Id. at 764.

rely on arbitration to settle disputes and instead forces the parties to confrontation. Lastly, the Second Circuit below said that the sympathy strike was "not seeking to pressure the employer to yield," but it is obvious the serious impact the stoppage by production and maintenance workers would have on the employer's ability to operate its business.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the Decision and Order of the United States Court of Appeals for the Second Circuit should be reversed and the proceeding remanded to the District Court with instructions to issue an injunction.

Respectfully submitted,

LAWRENCE B. KRAUS
General Counsel
RICHARD B. BERMAN
Labor Relations Counsel
G. BROCKWEL HEYLIN
Labor Relations Attorney
Chamber of Commerce of the
United States of America
1615 H Street, N.W.
Washington, D.C. 20062
WILLIAM J. CURTIN
HARRY A. RISSETTO
GERALD S. HARTMAN
Morgan, Lewis & Bockius
1800 M Street, N.W.
Washington, D.C. 20036

Attorneys for the Chamber of Commerce of the United States of America

Of Counsel:
MORGAN, LEWIS & BOCKIUS
1800 M Street, N.W.
Washington, D.C. 20036

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No. 339

IN THE

Supreme Court of the United States

TERM, 1975

BUFFALO FORGE COMPANY,

Petitioner,

—*vs*—

UNITED STEELWORKERS OF AMERICA AFL-CIO; I. W. ABEL as International President, MITCHELL F. MAZUCA, Individually and as District Director, and JOHN GRUKA, Individually and as International Representative of the United Steelworkers of America, AFL-CIO, Local Union 1874 of the United Steelworkers of America AFL-CIO, VALENTINE F. ZIZZI, Individually and as President, and VALENTINE OLEJNICZAK, Individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO; Local Union No. 3732 of the United Steelworkers of America AFL-CIO KERMIT HASELEY, Individually and as President, et al.,

Respondents.

BRIEF AMICUS CURIAE
of
Associated Industries of New York State, Inc.
In Support of Petitioner

GEORGE R. FEARON
600 Monroe Building
Syracuse, New York 13202
Attorney for Amicus Curiae

Of Counsel:
Charles E. Cooney, Jr.
600 Monroe Building
Syracuse, New York 13202

TABLE OF CONTENTS

	Page
Question Presented	1
Interest of the Amicus Curiae	1
POINT I — The principle adopted by the Supreme Court of the United States in Boys Market require the granting of a preliminary injunction	2
POINT II — The application of the Boys Market doctrine to this fact situation is supported by cogent legal precedent	6
POINT III — Public policy dictates a broad interpretation of the Boys Market doctrine	10
Conclusion	12

Table of Cases:

Amstar Corporation v. *Amalgamated Meat Cutters & Butcher Workmen of North America*, 468 F.2d 1372, 1373 (5th Cir. 1972)	6
Barnard College v. *Transport Workers Union of America, AFL-CIO*, 373 Fed. Supp. 211 (S.D. N.Y. 1974)	9
Boys Market v. *Retail Clerk's Union*, 398 U.S. 235 (1969)	3, 5, 6, 7, 8, 10, 11
General Cable Corporation v. *The International Brotherhood of Electrical Workers*, 331 F. Supp. 478 (D.C. Md. 1971)	8
Inland Steel Co. v. *Local Union No. 1545, United Mineworkers*, 43 LW 2205 (7th Cir. 1974)	10
Monongahela Power Co. v. *Local No. 2332 IBEW*, 484 F. 2d 1209 (4th Cir. 1973)	10
Napa Pittsburg Inc. v. *Automotive Chauffers Local No. 926*, 87 LRRM 2044 (3rd Cir. 1974)	10
Simplex Wire and Cable Co. v. *Local 2208 of the International Brotherhood of Electrical Workers*, 314 F. Supp. 885-886 (D.C. N.H. 1970)	7

	Page
Sinclair Refining Co. v. *Atkinson*, 370 U.S. 195 (1962)	3, 6, 8
United States Steelworkers of America v. *American Mfg. Co.*, 363 U.S. 564 (1960)	3
United States Steelworkers of America v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960)	3
United Steelworkers of America v. *Warrior 2nd Gulf Nab. Co.*, 363 U.S. 574 (1960)	3
Wilmington Shipping Co. v. *Longshoremen*, 86 LRRM 2843 (4th Cir. 1974) cert. den. 11-18-74, 87 LRRM 2716	10
Miscellaneous:	
Gary-Hobart Water Corp., 1974, CCH, NLRB par. 26516	11
Laconia Shoe Co., Inc., 74-75 CCH par. 15325	11
Norris-LaGuardia Act (Sec. 447 Stat. 70, 29 U.S.C. par. 104)	10
Steelworker Trilogy	3

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Petitioner,

—*vs*—

UNITED STEELWORKERS OF AMERICA AFL-CIO; I. W. ABEL as International President, MITCHELL F. MAZUCA, Individually and as District Director, and JOHN GRUKA, Individually and as International Representative of the United Steelworkers of America, AFL-CIO, Local Union 1874 of the United Steelworkers of America AFL-CIO, VALENTINE F. ZIZZI, Individually and as President, and VALENTINE OLEJNICZAK, Individually and as Vice President of Local Union No. 1874 of the United Steelworkers of America, AFL-CIO; Local Union No. 3732 of the United Steelworkers of America AFL-CIO KERMIT HASELEY, Individually and as President, et al.,

Respondents.

BRIEF AMICUS CURIAE
of
Associated Industries of New York State, Inc.
In Support of Petitioner

QUESTION PRESENTED

Whether a Federal District Court may temporarily enjoin a labor union strike in violation of a collective bargaining contract's no-strike clause.

INTEREST OF THE AMICUS CURIAE

This brief is filed pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States. Both

counsel for petitioner and counsel for respondent have stated that the respective parties consent to the filing of this brief.

Associated Industries of New York State, Inc. has since its founding in 1914 served as the "Voice of Industry" in New York State. The Association has approximately 1,800 member companies having offices and plants in every part of the State of New York. Both manufacturing and non-manufacturing companies, representing total business activities of many billions of dollars annually, are included within the membership. While Associated Industries numbers among its members many of the largest corporations in America, the vast majority of its membership is composed of companies having a payroll of less than 200 employees. It therefore speaks for the small employer as well as the large and particularly so in the present situation where it is the small employer who is without adequate redress under the present state of the law.

The Association is filing this brief to emphasize to the Court the extremely important nature of this case and the effect that it will have not only on employers in New York State but throughout the nation in the event that the relief requested is not afforded.

POINT I

THE PRINCIPLE ADOPTED BY THE SUPREME COURT OF THE UNITED STATES IN BOYS MARKET REQUIRE THE GRANTING OF A PRELIMINARY INJUNCTION.

One of the most fundamental federal policies implicit in the development of the American body of labor law is the emphasis on the importance of arbitration for resolving disputes between labor and management. The Supreme Court has consistently emphasized this policy to promote peaceful settlement of labor disputes through

arbitration most pointedly in the "Steelworker Trilogy" (United States Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior and Gulf Nab. Co., 363 U.S. 574 (1960); United States Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960).

Despite this continuing primary emphasis on the importance of arbitration, the Supreme Court of the United States, particularly in Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962), failed to adhere to its policy of favoring binding arbitration by holding that the anti-junction provisions of the Norris-LaGuardia Act precluded a federal district court from enjoining a strike in breach of a no-strike obligation under a collective bargaining agreement even though the agreement contained provisions for binding arbitration.

It was not until 1969 in Boys Market v. Retail Clerk's Union, 398 U.S. 235 (1969) that the Supreme Court of the United States recognized the contradiction between Sinclair and the Steelworker's Trilogy doctrine and held that a strike or work stoppage by a union against an employer with whom it had a collective bargaining agreement which contained a no strike clause and a provision providing for binding arbitration of grievances could be enjoined from continuing that strike or work stoppage. The Court stated in that case at page 253:

> "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance. The dissenting opinion in Sinclair suggested the following principles for the guidance of the district court in

determining whether to grant injunctive relief — principles that we now adopt:

'A District court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect; that the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance.' 370 U.S., at 228. (Emphasis in original.)"

The collective bargaining agreement between Buffalo Forge and the defendant locals dated January 9, 1973 states:

"Section III ¶ 14 - In addition to their responsibilities that may be provided elsewhere in this agreement the following shall be observed:

b. There shall be no strikes, work stoppages or interruption or impeding of work. No officers or representatives of the union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The

union recognizes its possible liability for viclation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by union officers or union representatives to prevent and terminate conduct prohibited by this paragraph, will not be construed as "aid" or "condonation" of such contact and shall not result in any disciplinary actions against the officers, committeemen or stewards involved.

d. There shall be no lockout."

The contract also contains a broad grievance procedure section:

"Section 5 ¶ 26. Should differences arise between the company and any employee covered by this agreement as to the meaning and application of the provisions of this agreement, or should any trouble of any kind arise in the plant, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner: ..."

Under Section 5 ¶ 32, final decision of the arbitrator is to be binding.

Does the action of the defendant locals in permitting if not encouraging its members to engage in a work stoppage by refusing to cross their sister locals' picket line justify the granting of an injunction. Certainly a unilateral work stoppage in direct violation of Section III paragraph 14 gives rise to a "difference" between the union and the company and the collective bargaining agreement provides for the arbitration of disputes.

Therefore this dispute meets the criteria of Boys Market that the Court must find (1) that the strike is in breach of a no-strike obligation under an effective agreement; (2) that the strike is over an arbitrable

grievance; and (3) that both parties are contractually bound to arbitrate the underlying grievance which caused the strike.

Granting that the application of Buffalo Forge meets this criteria, is an injunction warranted under ordinary principles of equity as set forth in the dissenting opinion in Sinclair, supra? The employer who has in good faith negotiated an agreement with his production and maintenance men through the arduous process of collective bargaining finds his work in vain. The defendant locals disregarding their contractual commitments are using their economic strength in support of the clerical local. Unless an injunction is granted in such a situation and the conduct of the union be arbitrated the employer can anticipate the whiplash again from the clerical local, assuming a contract is negotiated, if an impasse subsequently occurs in bargaining between the production and maintenance locals and the employer. Conduct such as this cries for injunctive relief and the settlement of controversy by arbitration.

POINT II

THE APPLICATION OF THE BOYS MARKET DOCTRINE TO THIS FACT SITUATION IS SUPPORTED BY COGENT LEGAL PRECEDENT.

The fallacy in the reasoning of the courts who have denied injunctive relief in similar proceedings is illustrated by the language of the court in Amstar Corporation v. Amalgamated Meat Cutters & Butcher Workmen of North America, 468 F.2d 1372, 1373 (5th Cir. 1972).

> "The strike by the Chalmette employees was not 'over a grievance' which the parties were contractually bound to arbitrate. Rather, the strike itself precipitated the dispute - the validity under the union's no strike obligation of the member-employees honoring the ILA picket line. Were

> we to hold that the legality of the very strike sought to be enjoined in the present situation constituted a sufficiently arbitrable underlying dispute for a Boys Markets injunction to issue, it is difficult to conceive of any strike which could not be so enjoined."

The Court completely ignores the fact that the only strikes that can be enjoined are those in breach of a no-strike obligation under an effective collective bargaining agreement where the strike is over an arbitrable grievance, namely, the failure of the employees to report to work according to the terms of their collective bargaining agreement.

In Simplex Wire and Cable Co. v. Local 2208 of the International Brotherhood of Electrical Workers, 314 F. Supp. 885-886 (D.C. N.H. 1970) the Court again misunderstood and stated the underlying grievance was the work stoppage itself. Also in that case the collective bargaining agreement stated:

> "The Union agrees that it will not cause or sanction a strike or work stoppage and the Company agrees that it will not engage in a lockout because of any disputes over matters relating to this Agreement. The Union further agrees that it will take prompt action to urge any or all employees engaged in a strike or work stoppage in violation of this Agreement to return to work. There shall be no responsibility on the part of the Union, its officers, representatives, or affiliates for any strike or other interruptions of work unless specifically provided for in this Agreement." (Emphasis added.)

This terminology contrasts with the language in the Buffalo Forge Agreement:

> "There shall be no strikes, work stoppages or interruption or impeding of work."

Again in General Cable Corporation v. The International Brotherhood of Electrical Workers, 331 F. Supp. 478 (D.C. Md. 1971) the Court indulged in sophistry to state the strike or work stoppage was not over a grievance which was subject to arbitration under the collective bargaining agreement because the grievance between the Company and Local was the result of the strike not the cause of it.

It is suggested that those courts which have denied injunctive relief should re-examine Justice Brennan's dissenting opinion in Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962) which seven years before its time clearly foreshadowed the Boys Market Doctrine.

At page 224 Judge Brennan stated:

> "I emphasize that the question in this case is not whether the basic policy embodied in Norris-LaGuardia against the injunction of activities of labor unions has been abandoned in actions under § 301; the question is simply whether injunctions are barred against strikes over grievances which have been routed to arbitration by a contract specifically enforceable against both the union and the employer. Enforced adherence to such arbitration commitments has emerged as a dominant motif in the developing federal law of collective bargaining agreements. But there is no general federal anti-strike policy; and although a suit may be brought under § 301 against strikes which, while they are breaches of private contracts, do not threaten any additional public policy, in such cases the anti-injunction policy of Norris-LaGuardia should prevail. Insistence upon strict application of Norris-LaGuardia to a strike over a dispute which both parties are bound by contract to arbitrate threatens a leading policy of our labor relations law. But there may be no such threat if the union has made no binding

> agreement to arbitrate; and if the employer cannot be compelled to arbitrate, restraining the strike would cut deep into the core of Norris-LaGuardia. Therefore, unless both parties are so bound, limiting an employer's remedy to damages might well be appropriate. The susceptibility of particular concrete situations to this sort of analysis shows that rejection of an outright repeal of § 4 was wholly consistent with acceptance of a technique of accommodation which would lead, in some cases, to the granting of injunctions against concerted activity. Accommodation requires only that the anti-injunction policy of Norris-LaGuardia not intrude into areas, not vital to its ends, where injunctive relief is vital to a purpose of § 301; it does not require unconditional surrender."

The relief requested by the plaintiff in this litigation is consistent with Justice Brennan's views.

In Barnard College v. Transport Workers Union of America, AFL-CIO, 372 Fed. Supp. 211 (S.D. N.Y. 1974) District Judge Weinfeld in granting the injunction stated at page 212:

> "Essentially, the parties differ as to whether section 28 of the collective bargaining agreement, the no-strike clause, is applicable where the union members fails to report to work because of refusal to cross a picket line of another union; plaintiff contends that it is applicable; defendants, that it is not. It is the union's further position that this dispute over the scope of the no-strike provision in section 28 is not a 'difference,' within the meaning of section 28—that it is not arbitrable. There is, however, a strong federal policy in favor of the arbitration of labor disputes, and '[a]n order to arbitrate the particular grievance should not be denied unless it may be said

with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.' Here, the terms of the no-strike provision are all encompassing and without limitation."

The collective bargaining agreement between Barnard College and the Transport Worker's Union is similar to the contract between Buffalo Forge and the Steelworker locals in that the terms of the no-strike provision in both contracts are all encompassing and without limitation.

It is submitted that the same reasoning should be applied to a determination of the issue before this Court.

The great weight of cogent judicial authority supports this premise. See Monongahela Power Co. v. Local No. 2332 IBEW, 484 F.2d 1209, (4th Cir. 1973); Inland Steel Co. v. Local Union No. 1545, United Mineworkers, 43LW2205 (7th Cir. 1974); Napa Pittsburgh Inc. v. Automotive Chauffers Local No. 926, 87 LRRM 2044 (3rd Cir. 1974); Wilmington Shipping Co. v. Longshoremen, 86 LRRM 2843 (4th Cir. 1974) cert. den. 11-18-74, 87 LRRM 2716.

POINT III

PUBLIC POLICY DICTATES A BROAD INTERPRETATION OF THE BOYS MARKET DOCTRINE.

It is ancient lore that the Norris-LaGuardia Act (§ 447 Stat. 70, 29 U.S.C. § 104) came into being because the Federal District Judges through their broad use of injunctive power forced the laboring man to disregard his unions picket line and in effect to become a strike breaker. Equally as ancient but now antiquated

was the theory that labor legislation was needed to equalize the bargaining power of the nascent unions with entrenched management. These times have changed and it is few who would argue that the small or medium sized employer is far out-weighed in economic strength in collective bargaining negotiations with an international union.

The recent successes of the union movement in organizing clerical locals in plants where only production and maintenance locals were formally organized has exacerbated the imbalance in economic strength. Now through the use of staggered contract termination dates, a union can whipsaw an employer by shutting down his plant when an impasse occurs either in the clerical negotiations or in the production and maintenance contract negotiations even though the other unit is contractually bound to a no-strike or work stoppage agreement. The number of actions now reaching the courts brought under Section 301 are marked testimony to this.

The holdings of the National Labor Relations Board in Gary-Hobart Water Corp., 1974, CCH, NLRB ¶26516 and in Laconia Shoe Co., Inc., 74-75 CCH ¶15325 compound the dilemma.

Worst, however, is yet to come, unless the use of injunctive relief is available in such cases as this. The recent legislation bringing not-for-profit health facilities under federal jurisdiction will precipitate disaster in the health service industry unless the Boys Market doctrine is held to cover situations such as arose at Buffalo Forge. Traditionally, where organized health facilities, because of the number and diversity of their employees, are multi-unit bargaining groups, if sympathy strikes or work stoppage are allowed whenever one of the multi-unit groups reaches a bargaining impass the health service industry and more importantly the patients it serve face anarchy.

CONCLUSION

It is urged that the judgment of the Circuit Court of Appeals be reversed.

Respectfully submitted,

GEORGE R. FEARON
600 Monroe Building
Syracuse, New York 13202
Attorney for Amicus Curiae

Of Counsel:
Charles E. Cooney, Jr.
600 Monroe Building
Syracuse, New York 13202